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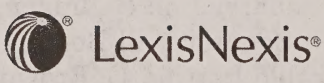

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TITLE 23

PUBLIC UTILITIES AND REGULATED INDUSTRIES

(CHAPTERS 30-59 IN VOLUME 23A; CHAPTERS 60-73 IN VOLUME 23B; CHAPTERS 74-87 IN VOLUME 24A; CHAPTERS 88-117 IN VOLUME 24B)

SUBTITLE 1. PUBLIC UTILITIES AND CARRIERS

CHAPTER.

SUBTITLE 1. PUBLIC UTILITIES AND CARRIERS

CHAPTER 1

GENERAL PROVISIONS

SECTION.

23-1-101. Definitions.

As used in this act, unless the context otherwise requires:

(1) "Affiliated interest with a public utility" includes the following:

(A) Every corporation and person owning or holding directly or indirectly twenty-five percent (25%) or more of the voting securities of the public utility;

(B) Every corporation or person in any chain of successive ownership, or holding, of twenty-five percent (25%) or more of the voting securities of that public utility;

(C) Every corporation, twenty-five percent (25%) or more of whose voting securities is owned by any person or corporation owning twenty-five percent (25%) or more of the voting securities of the public utility or is owned by any person or corporation in any chain of successive ownership of twenty-five percent (25%) or more of the voting securities; and

(D) Every person who is an officer or director of that public utility or of any corporation in any chain of successive ownership or holding of twenty-five percent (25%) or more of the voting securities of the public utility;

(2) "Commission" means the Arkansas Public Service Commission or the Arkansas Department of Transportation with respect to the particular public utilities and matters over which each agency has jurisdiction;

(3) "Commissioner" means one (1) of the commissioners of the Arkansas Public Service Commission with respect to the particular public utilities and matters over which that commission has jurisdiction;

(4) "Corporation" includes without limitation a private corporation, an association, a joint-stock association, a business trust, an electric cooperative corporation, and a limited liability company providing service for charge or compensation in any area or from any facility for which the commission has granted a certificate of convenience and necessity;

(5) "Exempt wholesale generator" means a person, including an affiliate of a public utility, that:

(A) Is engaged directly or indirectly through one (1) or more affiliates and exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale; and

(B) Does not own or operate a facility for the transmission of electricity other than interconnecting transmission facilities used to effect a sale of electric energy at wholesale;

(6) "Gross earnings" includes all amounts received, charged, or chargeable for or on account of any public service furnished or supplied in this state by any public utility and includes all gross income from all incidental, subordinate, or subsidiary operations of the utility in this state. However, revenues from the manufacture and sale of ice shall not be included;

(7) "Municipality" includes a city, a town, an improvement district, other than a county, and any other public or quasi-public corporation which is created or organized under the Arkansas Constitution or laws of the State of Arkansas;

(8) "Person" includes a natural person, a trustee, lessee, receiver, holder of beneficial or equitable interest, a partnership, or two (2) or more persons having a joint or common interest, and a corporation as defined in subdivision (4) of this section;

(9)(A) "Public utility" includes persons and corporations, or their lessees, trustees, and receivers, owning or operating in this state equipment or facilities for:

(i) Producing, generating, transmitting, delivering, or furnishing gas, electricity, steam, or another agent for the production of light, heat, or power to or for the public for compensation;

(ii) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation. However, nothing in this subdivision (9) shall be construed to include water facilities and equipment of cities and towns in the definition of public utility. Further, the term "public utility" shall not include any entity described by this subdivision (9) which meets any of the following criteria:

(a) All property owners' associations whose facilities are enjoyed only by members of that association or residents of the community governed by that association;

(b) An entity whose annual operating revenues would cause the entity to be classified as a Class B or lower water company pursuant to the uniform system of accounts adopted by the Arkansas Public Service Commission. However, the term "public utility" includes any water company that petitions, or a majority of whose metered customers petition, the Arkansas Public Service Commission to come under the Arkansas Public Service Commission's jurisdiction if the water company had combined annual operating revenues in excess of four hundred thousand dollars ($400,000) for the three (3) fiscal years immediately preceding the date of filing the petition; or

(c) All improvement districts;

(iii) Conveying or transmitting messages or communications by telephone or telegraph where such service is offered to the public for compensation;

(iv) Transporting persons by street, suburban, or interurban railway for the public for compensation;

(v) Transporting persons by motor vehicles if the vehicles are operated under a franchise granted by a municipality and in conjunction with, or as a part of, a street, suburban, or interurban railway, or in lieu of either thereof, for the public for compensation; and

(vi) Maintaining a sewage collection system or a sewage treatment plant, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and other appurtenances necessary or useful for the collection or treatment, purification, and disposal of the liquid and solid waste, sewage, night soil, and industrial waste. However, nothing in this subdivision (9) shall be construed to include sewerage facilities and equipment of cities and towns in the definition of public utility. The term "public utility" shall not include any entity described by this subdivision (9) which meets any of the following criteria:

(a) All property owners' associations whose facilities are enjoyed only by members of that association or residents of the community governed by that association;

(b) An entity whose annual operating revenues would cause the entity to be classified as a Class B or lower sewer company pursuant to the uniform system of accounts adopted by the Arkansas Public Service Commission; or

(c) All improvement districts.

(B) The term "public utility", as used for ratemaking purposes only:

(i) Shall include persons and corporations or their lessees, trustees, and receivers producing, generating, transmitting, delivering, or furnishing any of the services set forth in subdivisions (9)(A)(i) and (ii) of this section to any other person or corporation for resale or distribution to or for the public for compensation; and

(ii) Shall not include persons or corporations providing cellular telecommunications service and not providing any other public utility service in this state, unless the commission finds by order, after notice and hearing and upon substantial evidence, and which shall not take effect pending appeal therefrom, that the public interest requires the application of some or all of the provisions of this subdivision (9) to such persons or corporations.

(C) The term "public utility", as to any public utility defined in subdivisions (9)(A)(i), (ii), and (vi) of this section, shall not include any person or corporation who or which furnishes the service or commodity exclusively to himself or herself or itself, or to his or her or its employees or tenants, when the service or commodity is not resold to or used by others.

(D) Any other provision of law to the contrary notwithstanding, the term "public utility" shall not include an exempt wholesale generator as defined in subdivision (5) of this section.

(E) The term "public utility", as to any public utility defined in subdivision (9)(A)(iii) of this section, shall not include any person or corporation who or which:

(i) Furnishes the services exclusively to himself or herself or itself, or to employees; or

(ii) Furnishes the services:

(a) To persons who are temporary residents or guests in a hotel or motel owned by him or her or it;

(b) Patients in a hospital owned by him or her or it; or

(c) Students of a public or private institution of higher education who reside in housing provided by that institution.

(F)(i) Notwithstanding the foregoing provisions of this subdivision (9), the term "public utility" shall not include any person or corporation owning any interest in equipment or facilities used for any of the purposes specified in subdivision (9)(A)(i) or subdivision (9)(B) of this section, provided that:

(a) The interest in the equipment or facilities is leased under a net lease directly to a public utility or to a person or corporation that is exempt from regulation as a public utility, either as a sole lessee or joint lessee with one (1) or more other public utilities or persons or corporations so exempt;

(b) The person or corporation is otherwise primarily engaged in one (1) or more businesses other than the business of a public utility or is a person or corporation all of whose equity or beneficial ownership is held by one (1) or more persons or corporations so engaged, either directly or indirectly;

(c) If the lessee is a public utility, the lease to it has been authorized or approved by the Arkansas Public Service Commission;

(d) The lease of the interest in the equipment or facilities extends for an initial term of not less than ten (10) years, except for termination of the lease upon events set forth in the lease, unless any shorter term specified in the lease is not less than two-thirds (⅔) of the then-expected remaining useful life of the equipment or facilities or the lease is entered into following termination of a prior lease upon the liquidation, reorganization, bankruptcy, or insolvency of the prior lessee; and

(e) The rent reserved under the lease shall not include any amount based, directly or indirectly, on revenues or income of the lessee.

(ii) For purposes of this subdivision (9)(F), a public utility shall not cease to be such by reason of a lease, directly or indirectly, of a part or all of its interest in such equipment or facilities to any affiliate.

(iii) For purposes of this subdivision (9)(F), the term "person or corporation" shall include any receiver, trustee, or liquidating agent of the person or corporation.

(iv) The exception of the definition of "public utility" described in subdivision (9)(F)(i) of this section shall continue to apply, following termination of the lessee's right to possession or use of the interest in the equipment or facilities during the lease term or following termination of the lease by the lessee or its trustee pursuant to the provisions of section 365 of the Federal Bankruptcy Code or of any similar Arkansas or federal statute, for so long as the person or corporation referred to in subdivision (9)(F)(i) of this section does not supply electricity directly to the public. In any case, the exception to the definition of "public utility" described in subdivision (9)(F)(i) of this section shall continue to apply for a period of ninety (90) days following the termination, except that no change in rates that would otherwise be subject to the jurisdiction of the Arkansas Public Service Commission shall be effected during the ninety-day period without the approval of the Arkansas Public Service Commission.

(G)(i)*(a)(1)* Within a county not subject to subdivision (9)(G)(i)*(b)* of this section, a Class B or lower water company or Class B or lower sewer company that would otherwise be exempt from the definition of "public utility" under subdivision (9)(A)(ii)*(b)* of this section or subdivision (9)(A)(vi)*(b)* of this section shall be included within the term "public utility" if the Class B or lower water company or Class B or lower sewer company petitions the Arkansas Public Service Commission to have the company included.

(2) Subdivision (9)(G)(i)*(a)(1)* of this section does not apply to a water or sewer company formed under the nonprofit corporation laws

of this state or any improvement district or water distribution district law of this state.

(b)(1) All Class B or lower water companies or Class B or lower sewer companies that would otherwise be exempt from the definition of "public utility" under subdivision (9)(A)(ii)*(b)* of this section or subdivision (9)(A)(vi)*(b)* of this section shall be included within the term "public utility" if a majority of the customers of the company petition the Arkansas Public Service Commission to have the company included. The Arkansas Public Service Commission shall determine the sufficiency of the petition at a public hearing. The water or sewer company or any customer of the company may appear and present evidence on the sufficiency of the petition.

(2) Subdivision (9)(G)(i)*(b)(1)* of this section does not apply to a water or sewer company formed under the nonprofit corporation laws of this state or any improvement district or water distribution district law of this state.

(ii) The Arkansas Public Service Commission shall adopt rules governing the petition process.

(iii) A Class B or lower water company or Class B or lower sewer company shall provide the Arkansas Public Service Commission a list of metered customers upon request.

(H) The term "public utility", as to any public utility defined in subdivision (9)(A)(i) of this section, does not include a person or corporation that furnishes compressed natural gas as a motor fuel to or for the public for compensation and is not otherwise a public utility.

(I) The term "public utility", as to any public utility defined in subdivision (9)(A)(i) of this section, does not include a person or corporation that:

(i) Purchases electricity from an electric public utility or a municipal electric utility;

(ii) Furnishes electricity exclusively to charge battery electric vehicles and plug-in hybrid electric vehicles to or for the public for compensation; and

(iii) Is not otherwise a public utility;

(10) "Rate" means and includes every compensation, charge, fare, toll, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service, products, or commodity offered by it as a public utility to the public and means and includes any rules, regulations, practices, or contracts affecting any compensation, charge, fare, toll, rental, or classification;

(11) "Securities" means capital stock of all classes and all evidences of indebtedness secured or unsecured by lien upon capital assets or revenues, not including, however, any obligation falling due on or before a fixed date that is not more than one (1) year after the date of its issuance and not secured by a lien upon capital assets or revenues; and

(12) "Service" includes any product or commodity furnished and the plant, equipment, apparatus, appliances, property, and facilities employed by any public utility in performing any service or in furnishing

any product or commodity devoted to the public purposes of the utility and to the use and accommodation of customers or patrons.

History. Acts 1935, No. 324, § 1; Pope's Dig., § 2064; Acts 1967, No. 234, § 4; 1973, No. 125, § 1; 1985, No. 455, § 1; 1985, No. 1084, § 1; A.S.A. 1947, § 73-201; Acts 1987 (1st Ex. Sess.), No. 37, §§ 1, 2; 1988 (4th Ex. Sess.), No. 21, § 1; 1989, No. 53, § 1; 1989, No. 952, § 1; 1991, No. 854, § 1; 1991, No. 1037, § 1; 1997, No. 305, § 1; 1999, No. 1322, § 1; 2013, No. 662, §§ 1-3; 2013, No. 1133, §§ 1, 2; 2015, No. 380, § 1; 2017, No. 285, § 1; 2017, No. 707, § 89; 2019, No. 391, § 1.

Amendments. The 2017 amendment by No. 285 added (9)(I).

The 2017 amendment by No. 707 substituted "Department of Transportation" for "State Highway and Transportation Department" in (2).

The 2019 amendment added the (9)(G)(i)*(a)(1)*, (9)(G)(i)*(a)(2)*, (9)(G)(i)*(b)(1)*, and (9)(G)(i)*(b)(2)* designations; inserted "of this section" in (9)(G)(i)*(a)(1)* and (9)(G)(i)*(b)(1)*; substituted "Subdivision (9)(G)(i)*(a)(1)* of this section does not" for "The provisions of this section do not" in (9)(G)(i)*(a)(2)*; and substituted "Subdivision (9)(G)(i)*(b)(1)* of this section does not" for "The provisions of this section do not" in (9)(G)(i)*(b)(2)*.

23-1-103. Compliance with Acts 1935, No. 324, and rules of commission required — Penalties for noncompliance.

(a) Every public utility and every person or corporation shall obey and comply with every requirement of this act and of every order, decision, direction, or rule made or prescribed by the commission in the matters specified or any other matter in any way relating to or affecting the business of any public utility. The commission shall do everything necessary or proper in order to secure compliance with, and observance of, every order, decision, direction, or rule by all officers, agents, and employees of every public utility.

(b)(1) Upon a finding by the commission that any jurisdictional water, gas, telephone, or electric public utility has knowingly, willfully, and purposefully violated any of the provisions of this act, by agent or otherwise, the commission shall assess a civil sanction of one thousand dollars ($1,000) on the utility.

(2) Each instance of violation shall constitute a separate violation. However, in case of a continued violation, each day's continuance thereof shall not be deemed to be a separate and distinct violation.

(3) The power and authority of the commission to impose civil sanctions are not to be affected by any other civil or criminal proceeding, concerning the same violation, nor shall the imposition of the sanction preclude the commission from imposing other sanctions which are provided for by law.

(4) The proceeds from the civil sanctions imposed under this subsection shall be deposited into the State Treasury as special revenues and credited to the Public Service Commission Fund.

(5) The imposition of a civil sanction under this subsection is subject to review by the commission and by the Court of Appeals in the manner provided by §§ 23-2-422 — 23-2-424.

History. Acts 1935, No. 324, § 61; Pope's Dig., § 2121; Acts 1985, No. 688, § 3; A.S.A. 1947, §§ 73-257; Acts 2019, No. 315, § 2371.

Amendments. The 2019 amendment, in (a), substituted "or rule" for "rule, or regulation" in the first and second sentences.

CHAPTER 2

REGULATORY COMMISSIONS

SUBCHAPTER.

Subchapter 1 — Arkansas Public Service Commission

SECTION.

23-2-103. Offices — Place of hearings and investigations.

(a) The office of the Arkansas Public Service Commission shall be in Little Rock, Arkansas, but the commission may conduct hearings and make investigations anywhere in the different parts of the state when, in the opinion of the commission, the hearings will best serve the interest and convenience of the public.

(b) When a formal proceeding to consider a general change or modification in the rates and charges of a public utility has been initiated before the commission, the commission shall conduct a hearing for the purpose of receiving public comment in an appropriate location or locations within the service territory of the public utility.

History. Acts 1945, No. 40, § 1; A.S.A. 1947, § 73-104; Acts 1999, No. 1072, § 1; 2017, No. 334, § 1.

Amendments. The 2017 amendment substituted "Little Rock, Arkansas" for "the State Capitol" in (a).

Subchapter 2 — Transportation

SECTION.

23-2-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Department" means the Arkansas Department of Transportation; and

(2) "Transportation" means the carriage of persons and property for compensation by air, rail, water, carrier pipelines, or motor carriers.

History. Acts 1957, No. 132, § 1; A.S.A. 1947, § 73-151; Acts 2017, No. 707, § 90.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (1).

23-2-207, 23-2-208. [Repealed.]

Publisher's Notes. These sections, concerning officers and employees, and free transportation of employees, were repealed by Acts 2017, No. 707, §§ 91, 92. The sections were derived from the following sources:

23-2-207. Acts 1957, No. 132, § 6; A.S.A. 1947, § 73-157.

23-2-208. Acts 1957, No. 132, § 7; A.S.A. 1947, § 73-158.

23-2-209. Jurisdiction of commission.

(a) The jurisdiction of the State Highway Commission shall extend to and include all matters pertaining to the regulation, certification, and review of assessment for ad valorem taxation and operation of all carriers providing a transportation service for compensation.

(b) Nothing in this subchapter shall vest the commission with jurisdiction as to any rate, charge, rule, regulation, order, hearing, investigation, or other matter pertaining to the operation within the limits of any municipality of any carrier operating wholly within a municipality.

(c) [Repealed.]

History. Acts 1957, No. 132, § 9; A.S.A. 1947, § 73-160; Acts 1991, No. 802, § 1; 2017, No. 707, § 93.

Amendments. The 2017 amendment repealed (c).

23-2-210. [Repealed.]

Publisher's Notes. This section, concerning rules and regulations, was repealed by Acts 2017, No. 707, § 94. The section was derived from Acts 1957, No. 132, § 11; A.S.A. 1947, § 73-162.

23-2-211. Proceedings before department.

(a) In the exercise of its jurisdiction, the Arkansas Department of Transportation shall have the power to promulgate reasonable rules and regulations governing procedure before the department and for other purposes.

(b) The department shall have full power to decide all matters which come before the department.

(c) Any order made by the department shall be subject to the same right of appeal by any party to the proceedings as is prescribed by § 23-2-425 or as may be otherwise provided by law.

History. Acts 1957, No. 132, §§ 9, 10; A.S.A. 1947, §§ 73-160, 73-161; Acts 2017, No. 707, § 95.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-2-212. Expenses.

(a) All expenses incurred by the Arkansas Department of Transportation under the provisions of this subchapter, including the actual and necessary traveling and other expenses and disbursements incurred while on business of the department, shall be paid from the funds provided for the use of the department.

(b) All costs of operation and maintenance of the department shall be paid by vouchered warrants drawn on the Treasurer of State from appropriations made for such purposes by the General Assembly.

(c) The department shall follow the same procedures used or established by law in writing vouchers, itemizing accounts, in expenses, keeping of records, of salaries, and in general, the cost accounting method of keeping records in the same manner as is prescribed by law for the Arkansas Public Service Commission.

History. Acts 1957, No. 132, §§ 7, 8; A.S.A. 1947, §§ 73-158, 73-159; Acts 2017, No. 707, § 96.

Amendments. The 2017 amendment, in (a), substituted "Department of Transportation" for "State Highway and Transportation Department", and substituted "under" for "pursuant to".

Subchapter 3 — General Regulatory Authority of Commissions

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-2-303. Jurisdiction over intrastate transportation services.

Nothing contained in this act shall be construed as giving the Arkansas Public Service Commission any jurisdiction over taxicab or truck service in cities or towns, and of railroad, taxicab, or motor bus service between cities or towns, jurisdiction over which is vested in the Arkansas Department of Transportation.

History. Acts 1935, No. 324, § 1; Pope's Dig., § 2064; Acts 1967, No. 234, § 4; 1973, No. 125, § 1; A.S.A. 1947, § 73-201; Acts 2017, No. 707, § 97.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-2-304. Certain powers of commission enumerated.

(a) Upon complaint or upon its own motion and upon reasonable notice and after a hearing, the Arkansas Public Service Commission shall have the power to:

(1) Find and fix just, reasonable, and sufficient rates to be thereafter observed, enforced, and demanded by any public utility;

(2) Determine the reasonable, safe, adequate, and sufficient service to be observed, furnished, enforced, or employed by any public utility and to fix this service by its order, or rule;

(3) Ascertain and fix adequate and reasonable standards, classifications, rules, practices, and services to be furnished, imposed, observed, and followed by any or all public utilities;

(4) Ascertain and fix adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage, or other conditions pertaining to the supply of all products, commodities, or services furnished or rendered by any and all public utilities;

(5) Prescribe reasonable rules for the examination and testing of the production, commodity, or service, and, for the measurement thereof, establish or approve reasonable rules, specifications, and standards to secure the accuracy of all meters or appliances for measurement;

(6) Provide for the examination and testing of any and all appliances used for the measurement of any product, commodity, or service of any public utility;

(7)(A) Ascertain and fix the value of the whole or any part of the property of any public utility insofar as this value is material to the exercise of the jurisdiction of the commission.

(B) The commission may make revaluations of the whole or any part of the property from time to time and may ascertain the value of any new construction, extension, and addition to or retirement from the property of every public utility;

(8)(A) Require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules and forms of account as the commission may prescribe.

(B) The commission may ascertain, determine, and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility.

(C) Each public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed by the commission;

(9) Assure that retail customers should have access to safe, reliable, and affordable electricity, including protection against service disconnections in extreme weather or in cases of medical emergency or nonpayment for unrelated services;

(10)(A) Assure that electric utility bills, usage, and payment records should be treated as confidential unless the retail customer consents to their release or the information is provided only in the aggregate.

(B) Notwithstanding subdivision (a)(10)(A) of this section, release of such information may be made pursuant to subpoena, court order, or other applicable statute or rule; and

(11)(A)(i) Propose, develop, solicit, approve, require, implement, and monitor financial assistance programs for utility customers who are sixty-five (65) years of age or older or who meet the income eligibility qualifications of the Low Income Home Energy Assistance Program administered by the Arkansas Energy Office of the Division of Environmental Quality.

(ii) After notice and a hearing, the commission may approve and order a financial assistance program for utility customers if the commission determines that the financial assistance program is beneficial to the ratepayers of a public utility and the public utility.

(B) The commission shall not fix rates, charges, or surcharges that recover, directly or indirectly, any portion of the cost of programs authorized under subdivision (a)(11)(A) of this section from a ratepayer that is not in the customer class of ratepayers eligible to participate in the programs.

(b) Because of competitive and technological changes relating to the services provided by telephone public utilities, the commission, upon petition by the telephone public utility, after notice and hearing and a finding that it is in the public interest, may deviate from the rate-base rate of return method of regulation in establishing rates and charges for services provided by the telephone public utility.

(c) In the discharge of its duties under this act, the commission may cooperate with regulatory commissions of other states and of the United States. It may also hold joint hearings and make joint investigations with such commissions.

History. Acts 1935, No. 324, §§ 8, 19; Pope's Dig., §§ 2071, 2082; A.S.A. 1947, §§ 73-202, 73-218; Acts 1993, No. 238, § 1; 2003, No. 204, § 6; 2017, No. 1102, § 1; 2019, No. 315, §§ 2372–2375; 2019, No. 910, § 3239.

Amendments. The 2017 amendment added (a)(11).

The 2019 amendment by No. 315 substituted "or rule" for "rule, or regulation" in (a)(2) and (a)(10)(B); substituted "rules" for "regulations" in (a)(3) and (a)(5); and deleted "regulations" following "rules" in (a)(5) and (a)(8)(A).

The 2019 amendment by No. 910 substituted "Arkansas Energy Office" for "Department of Human Services" in (a)(11)(A)(i).

Subchapter 4 — Procedure Before Commissions

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-2-403. Evidence and pleading.

(a) The Arkansas Public Service Commission and the Arkansas Department of Transportation shall prescribe the rules of procedure and for taking of evidence in all matters that may come before them.

(b) On the investigations, preparations, and hearing of cases, the commission and the department shall not be bound by the strict technical rules of pleading and evidence, but they may exercise such discretion as will facilitate their efforts to ascertain the facts bearing upon the right and justice of the matters before them.

History. Acts 1945, No. 40, § 2; A.S.A. 1947, § 73-127; Acts 2017, No. 707, § 98.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-2-405. Service of process, notices, complaints, etc.

(a) All process issued by the commission shall extend to all parts of the state, and any such process, together with the service of all notices issued by the commission, as well as copies of complaints, rules, and orders of the commission, may be served by any person authorized to serve process issued out of courts of law, or by mail, as the commission may direct.

(b) In instances in which service is had by mail, a duplicate of the instrument served shall be enclosed, upon which duplicate the person served shall endorse the date of his or her receipt of the original and promptly return the duplicate to the commission.

(c) Any person who fails, neglects, or refuses to promptly return the receipt and duplicate shall be guilty of a Class A misdemeanor.

History. Acts 1935, No. 324, § 29; Pope's Dig., § 2092; A.S.A. 1947, § 73-228; Acts 2005, No. 1994, § 203; 2019, No. 315, § 2376.

Amendments. The 2019 amendment substituted "rules, and orders" for "rules, orders, and regulations" in (a).

23-2-406. Oaths — Testimony.

Any commissioner, secretary, or assistant secretary employed by the Arkansas Public Service Commission or the Arkansas Department of Transportation may administer oaths and take testimony.

History. Acts 1945, No. 40, § 2; A.S.A. 1947, § 73-130; Acts 2017, No. 707, § 99.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-2-407. Subpoenas for witnesses — Issuance and service.

Subpoenas for witnesses shall be issued by the secretary, assistant secretary, or any commissioner of the Arkansas Public Service Commission or the Arkansas Department of Transportation and shall be served as provided by law for the service of other subpoenas.

History. Acts 1945, No. 40, § 2; A.S.A. 1947, § 73-130; Acts 2017, No. 707, § 100.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-2-409. Subpoenas — Failure to comply — Penalty.

The failure or refusal of any witness to appear or to produce any books, papers, or documents required by the Arkansas Public Service Commission or the Arkansas Department of Transportation and to submit them to the inspection of the commission or the department or the refusal to answer any questions propounded by the commission or the department shall constitute a violation punishable by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500).

History. Acts 1945, No. 40, § 2; A.S.A. 1947, § 73-130; Acts 2005, No. 1994, § 146; 2017, No. 707, § 101.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-2-418. Records of proceedings and testimony.

(a) A full and complete record shall be kept of all proceedings had before the Arkansas Public Service Commission, the Arkansas Department of Transportation, any commissioner, or any examiner on any formal investigation.

(b) All testimony shall be recorded by official reporters appointed by the commission or the department.

History. Acts 1935, No. 324, § 32; Pope's Dig., § 2095; Acts 1945, No. 40, § 2; A.S.A. 1947, §§ 73-127, 73-231; Acts 2017, No. 707, § 102.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-2-420. Orders, findings, rules, certificates, etc., under Acts 1935, No. 324, to be in writing — Copies as evidence.

(a) Every order, finding, authorization, rule, or certificate issued or approved by the commission under any provisions of this act shall be in writing and entered on the records of the commission, all of which shall be public records.

(b) A certificate under the seal of the commission that any such order, finding, authorization, rule, or certificate has not been modified, stayed, suspended, or revoked shall be received as evidence in all courts as to the facts therein stated.

History. Acts 1935, No. 324, § 32; Pope's Dig., § 2095; A.S.A. 1947, § 73-231; Acts 2019, No. 315, § 2377.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (a) and (b).

23-2-423. Commission orders — Judicial review — Procedure.

(a)(1) Any party to a proceeding before the Arkansas Public Service Commission aggrieved by an order issued by the commission in the proceeding may obtain a review of the order in the Court of Appeals. The review of the order may be had by filing in that court, within thirty (30) days after the order of the commission upon the application for rehearing or within thirty (30) days from the date the application is deemed to be denied as provided in § 23-2-422, a notice of appeal stating the nature of the proceeding before the commission, identifying the order complained of and the reasons why the order is claimed to be unlawful, and praying that the order of the commission be modified, remanded, or set aside in whole or in part.

(2) No proceeding to review any order of the commission shall be brought by any party unless that party has made application to the commission for a rehearing on the order.

(b)(1) A copy of the petition shall immediately be transmitted by the Clerk of the Court of Appeals to the secretary of the Arkansas Public Service Commission. Thereupon, the commission, within thirty (30) days from the service of the notice, shall file with the Court of Appeals the record upon which the order complained of was entered.

(2) The record shall consist of a complete transcript of the record in the case made before the commission which shall include a copy of all pleadings, proceedings, testimony, exhibits, orders, findings, and opinions in the case. However, the parties and the commission may stipulate that only a specified portion of the record as made before the commission shall be included in the transcript to be filed with the Court of Appeals.

(c)(1) Upon the filing of the petition, the court shall have original jurisdiction, which, upon the filing of the record with it, shall be exclusive, to affirm, modify, or set aside the order of the commission in whole or in part.

(2) No objection to any order of the commission shall be considered by the Court of Appeals unless the objection shall have been urged before the commission in the application for rehearing.

(3) The finding of the commission as to the facts, if supported by substantial evidence, shall be conclusive.

(4) The review shall not be extended further than to determine whether the commission's findings are supported by substantial evidence and whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violated any right of the petitioner under the laws or Constitution of the United States or of the State of Arkansas.

(5) All evidence before the commission shall be considered by the court regardless of any technical rule which might have rendered the evidence inadmissible if originally offered in the trial of any action at law or in equity.

(d) The Court of Appeals, on review, shall advance commission cases as matters of public interest over all other civil cases except child custody cases, and appeals under the Workers' Compensation Law, § 11-9-101 et seq., and the Division of Workforce Services Law, § 11-10-101 et seq.

(e) Section 23-2-425 shall have no application to judicial review of orders of the commission.

History. Acts 1973, No. 231, §§ 3, 4; 1985, No. 770, § 1; A.S.A. 1947, §§ 73-229.1, 73-229.2; Acts 1991, No. 811, § 2; 2019, No. 910, § 570.

Amendments. The 2019 amendment substituted "Division of Workforce Services Law" for "Department of Workforce Services Law" in (d).

23-2-425. Appeals from department.

(a)(1) Within thirty (30) days after the entry on the record of the Arkansas Department of Transportation of any order made by it, any party aggrieved may file a written motion with the secretary of the department praying for appeal from the order to the Pulaski County Circuit Court.

(2) Thereupon, the appeal shall be automatically deemed as granted as a matter of right without any further order.

(3) Upon the granting of the appeal, the secretary shall at once make a full and complete transcript of all proceedings had before the department in the matter and of all evidence before it in the matter, including all files therein.

(4) The secretary shall deposit the transcript in the office of the clerk of the circuit court immediately.

(5) The appeal shall be given preference over all other cases on the docket of the circuit court.

(6) Upon the filing of the motion of the appeal and at any time thereafter, the circuit court or its circuit judge shall have the right to issue such temporary or preliminary orders as to it or him or her may seem proper until a final decree is rendered.

(7) The circuit court shall thereupon review the order upon the record presented in the case and enter its finding and order thereon. It shall cause the order to be certified to the department immediately. The order shall direct that action be taken by the department in conformity with it unless an appeal from the order to the Supreme Court shall be taken within the time specified in subsection (b) of this section and in case of such an appeal to await further orders of the circuit court.

(b)(1) Within thirty (30) days after rendition of any order of any circuit court under the terms of this act, whether such an order is rendered on appeal of municipal council action, city commission action, or department action, any party aggrieved may file a motion in writing in the circuit court or in the office of the clerk thereof praying an appeal from such an order to the Supreme Court.

(2) The motion, when so filed, shall be granted as a matter of right by the circuit court or by the clerk thereof.

(3) The appeal to the Supreme Court shall be governed by the procedure and reviewed in the manner applicable to other appeals from the circuit court. However, any finding of fact by the circuit court shall not be binding on the Supreme Court, and the Supreme Court may and shall review all the evidence and make such findings of fact and law as it may deem just, proper, and equitable.

(4) The record shall be lodged in the office of the Clerk of the Supreme Court within sixty (60) days from the rendition of the order in the circuit court.

(5) All such cases shall be regarded and treated in the Supreme Court as cases involving public interest and shall be advanced and given preference on the docket of the court on motion of either party.

History. Acts 1921, No. 124, §§ 20, 21; Pope's Dig., §§ 2019, 2020; A.S.A. 1947, §§ 73-133, 73-134; Acts 2017, No. 707, § 103.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

23-2-427. Orders, rules, etc., of department not controverted in actions between private person and railroad company.

In all actions between private parties and railroad companies brought under Acts 1899, No. 53, the rates, charges, orders, rules, regulations, and classifications prescribed by the Arkansas Department of Transportation before the institution of the action shall be held, deemed, and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein.

History. Acts 1901, No. 24, § 1, p. 53; C. & M. Dig., § 858; Pope's Dig., § 1062; A.S.A. 1947, § 73-137; Acts 2017, No. 707, § 104.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

CHAPTER 3

REGULATION OF UTILITIES AND CARRIERS GENERALLY

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

23-3-101. Organization or reorganization.

(a) Organizations or reorganizations of all public utilities shall be subject to the supervision and control of the Arkansas Public Service Commission or the Arkansas Department of Transportation.

(b)(1) No organization or reorganization shall be had or given effect without the written approval of the commission or the department.

(2) No plan of organization or reorganization shall be approved by the commission or the department unless it shall be established by the applicant for approval that the plan is consistent with the public interest.

History. Acts 1935, No. 324, § 56; Pope's Dig., § 2116; A.S.A. 1947, § 73-252; Acts 2017, No. 707, § 105.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-3-103. Stocks, bonds, notes, etc., and creation of liens — Regulation by commissions.

(a)(1) The power of public utilities to issue stocks, stock certificates, bonds, notes, and other evidences of indebtedness in case of public utilities incorporated under the laws of this state and to create liens on property in this state in case of public utilities incorporated under the laws of any state or foreign country is a special privilege, the right of supervision, regulation, restriction, and control of which is, and shall continue to be, vested in the state.

(2) The power of public utilities described in subdivision (a)(1) of this section shall be exercised as provided by law and under such rules as the Arkansas Public Service Commission may prescribe.

(b) In instances where the public utility is also a regional transmission organization that is jurisdictional to the Federal Energy Regulatory Commission and the debt is authorized by the Federal Energy Regulatory Commission and does not create a lien on property in this state, no commission authorization is required.

History. Acts 1935, No. 324, § 58; Pope's Dig., § 2118; A.S.A. 1947, § 73-254; Acts 2015, No. 899, § 1; 2019, No. 315, § 2378.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(2).

23-3-106. Stocks, bonds, notes, etc. — Disposition of proceeds.

The commission shall have the power to require every public utility, other than municipalities, to account for the disposition of the proceeds of all sales of stocks, bonds, notes, or other evidence of indebtedness, in such form and detail as it may deem advisable. Also, the commission shall have the power to establish such rules as it may deem necessary to insure the disposition of the proceeds for the purpose specified in its order.

History. Acts 1935, No. 324, § 59; Pope's Dig., § 2119; Acts 1973, No. 410, § 1; 1981, No. 709, § 1; A.S.A. 1947, § 73-255; Acts 2019, No. 315, § 2379.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the second sentence.

23-3-109. Annual statements of gross earnings.

(a) Annually, during the month of March, each utility subject by law to the payment of fees or charges under the jurisdiction of either the Arkansas Public Service Commission or the Arkansas Department of Transportation shall prepare and transmit to the commission or the department having jurisdiction over the utility a certified statement of the gross earnings from its properties in Arkansas for the preceding calendar year ending December 31.

(b) No deduction shall be made from the gross earnings on account of any payments, expenses, or uncollectible accounts, except refunds occasioned by errors or overcharge.

(c) Upon receipt of these certified statements, the commission or the department shall determine the total gross earnings of all of the utilities.

(d) However, any utility may deduct from its gross earnings any amounts derived from wholesale sales of electricity to any other utility, an electric cooperative corporation, or any other entity at wholesale rates regulated by the Arkansas Public Service Commission or the Federal Energy Regulatory Commission.

History. Acts 1945, No. 40, § 3; 1949, No. 262, § 7; A.S.A. 1947, § 73-248; Acts 1987, No. 831, § 1; 2017, No. 707, § 106.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transporta-

tion Department" in (a).

23-3-110. Annual fees generally.

(a)(1) There is levied and charged and there shall be collected annually from each utility subject by law to the payment of fees or charges under the jurisdiction of either the Arkansas Public Service Commission or the Arkansas Department of Transportation a fee in an amount equivalent to that proportion of the total utilities costs that the gross earnings of each of the utilities bear to the total gross earnings of all utilities.

(2) However, the fee to be collected annually from each of the utilities shall not exceed, in any year, an amount exceeding two-fifths of one percent (⅖ of 1%) of the gross earnings of each respective utility.

(3) In determining the amount of any fee for any individual utility pursuant to this subsection, the amount of gross earnings subject to the levy shall be reduced by any amounts derived from the sale of electricity to any other utility, an electric cooperative corporation, or any other entity at wholesale rates regulated by the Arkansas Public Service Commission or the Federal Energy Regulatory Commission.

(b)(1) After determining the amount of the fee due to be paid by each of the utilities, the commission or the department having jurisdiction shall, annually on or before August 15, prepare and transmit to each of the utilities a statement of the fees due for utilities costs during the preceding fiscal year.

(2) Thereafter, on or before August 31, each of the utilities shall pay to the secretary of the commission or the department having jurisdiction all fees shown to be due by the statements.

(c) On receipt of the fees and charges, the secretary shall pay them into the State Treasury, and the amounts so received by the Treasurer of State shall be credited by him or her to the General Revenue Fund Account of the State Apportionment Fund.

(d) In the event any utility fails or refuses to pay the fees provided for in this section on or before August 31, the commission or the department having jurisdiction shall add to the fee a penalty of twenty-five percent (25%) thereof and certify the amount of the delinquent tax and penalty to the Attorney General for collection.

History. Acts 1945, No. 40, § 3; A.S.A. 1947, §§ 73-249, 73-250; Acts 1987, No. 831, § 2; 2017, No. 707, § 107.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" and deleted "which shall be" preceding "equivalent" in (a)(1).

Subchapter 2 — Certificates of Convenience and Necessity

SECTION.

23-3-201. Requirement for new construction or extension.

(a) New construction or operation of equipment or facilities for supplying a public service or the extension of a public service shall not be undertaken without first obtaining from the Arkansas Public Service Commission a certificate that public convenience and necessity require or will require the construction or operation.

(b)(1) This section does not require a certificate of public convenience and necessity for:

(A) The replacement or expansion of existing equipment or facilities with similar equipment or facilities in substantially the same location or the rebuilding, upgrading, modernizing, or reconstructing of equipment or facilities that increase capacity if no increase in the width of an existing right-of-way is required;

(B) The construction or operation of equipment or facilities for supplying a public service that has begun under a limited or conditional certificate or authority as provided in §§ 23-3-203 — 23-3-205;

(C) The extension of a public service:

(i) Within a municipality or district where a public service has been lawfully supplied;

(ii) Within or to territory then being served; or

(iii) That is necessary in the ordinary course; or

(D) Except as provided in § 23-18-504(c), the construction or operation of a major utility facility as defined in the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or any exemption under the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq.;

(2)(A) This section does not require a certificate of public convenience and necessity for an electric utility that owns or has a legally recognized right-of-way, easement, or similar property right to property that is not being acquired by eminent domain and is traversed by the construction or connection of the following electric utility facilities:

(i) A new or existing transmission or distribution substation, transmission switching station, or transmission metering point and associated facilities or the extension to such facilities, provided that the public utility owns or has a legally recognized right-of-way, easement, or similar property right to the property that is traversed by the construction or connection of the facilities;

(ii) If the electric public utility is not an electric cooperative:

(a) Any distribution lines to or from the facilities identified in subdivision (b)(2)(A)(i) of this section;

(b) Transmission lines to or from the facilities identified in subdivision (b)(2)(A)(i) of this section of up to two (2) line miles in length with a voltage of greater than one hundred kilovolts (100 kV); or

(c) Transmission lines to or from the facilities identified in subdivision (b)(2)(A)(i) of this section of up to five (5) line miles in length with a voltage of less than or equal to one hundred kilovolts (100 kV); or

(iii) If the electric public utility is an electric cooperative:

(a) Any distribution lines to or from the facilities identified in subdivision (b)(2)(A)(i) of this section; or

(b) Any transmission lines up to five (5) line miles in length to or from the facilities identified in subdivision (b)(2)(A)(i) of this section if the electric cooperative has informed the landowners whose property is traversed according to the electric cooperative's business practices.

(B) Property that the public utility has previously acquired by eminent domain for the construction, operation, or connection of any other public utility facility is considered a legally recognized property right for the purposes of this subdivision (b)(2).

(C) This subdivision (b)(2) does not apply if the transmission or distribution lines to or from the facilities identified in subdivision (b)(2)(A)(i) of this section include a navigable waterway crossing subject to § 23-3-501 et seq.

(c) To the extent a member cooperative of a generation and transmission cooperative, as defined under § 23-4-1101, is exempt from the requirement to obtain a certificate of public convenience and necessity under subsection (b) of this section, the exemption shall extend to the generation and transmission cooperative.

(d) An exemption claimed by a public utility under § 23-18-504(a)(5) does not bar the:

(1) Public utility from seeking the issuance of a certificate of public convenience and necessity under this section; or

(2) Commission from granting the public utility the certificate of public convenience and necessity sought under subdivision (d)(1) of this section and thereby allowing the public utility to seek recovery of the reasonable cost of the equipment or facilities through rates.

History. Acts 1935, No. 324, § 41; Pope's Dig., § 2104; Acts 1957, No. 103, § 3; 1967, No. 234, § 5; A.S.A. 1947, § 73-240; Acts 1999, No. 1556, § 6; 2001, No. 324, § 1; 2003, No. 204, § 8; 2007, No. 468, § 1; 2009, No. 164, § 1; 2011, No. 910, § 12; 2013, No. 341, § 1; 2015, No. 736, § 2; 2015, No. 917, § 1; 2017, No. 273, § 1; 2017, No. 334, § 2; 2019, No. 765, § 1.

Amendments. The 2017 amendment by No. 273 added (b)(5).

The 2017 amendment by No. 334 redesignated (d) as (d)(1) and (2); added "or" at the end of the (d)(1); and, in (d)(2), substituted "Commission" for "nor shall such exemption bar the commission", "the certificate" for "such certificate", and inserted "sought under subdivision (d)(1) of this section", and made stylistic changes.

The 2019 amendment redesignated (b)(1) through (b)(4) as (b)(1)(A) through (b)(1)(D); rewrote former (b)(5) and redesignated it as (b)(2)(A); and added (b)(2)(B) and (b)(2)(C).

23-3-202. Requirement for operation under suspended permit.

A public utility shall not exercise any right or privilege under any franchise or permit, the exercise of which has been suspended or discontinued for more than one (1) year, without first obtaining from the Arkansas Public Service Commission or the Arkansas Department of Transportation a certificate that public convenience and necessity require the exercise of such a right or privilege.

History. Acts 1935, No. 324, § 42; Pope's Dig., § 2105; A.S.A. 1947, § 73-241; Acts 2017, No. 707, § 108.

Amendments. The 2017 amendment substituted "A public utility shall not" for "No public utility shall", and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-3-204. Preliminary orders.

(a) If the applicant desires to exercise the right or privilege under a franchise, permit, ordinance, vote, or other authority which it contemplates securing or which has not then been granted to it, the applicant may apply to the commission for an order preliminary to the issuance of the certificate.

(b) The commission may thereupon make an order declaring that it will thereafter, upon application under such rules as it may prescribe, issue the desired certificate upon the terms and conditions as it may designate after the applicant has obtained the contemplated franchise, permit, ordinance, vote, or other authority.

(c) Upon the presentation to the commission of evidence satisfactory to it, if such a franchise, permit, ordinance, vote, or other authority has been secured by the applicant, the commission shall thereupon issue the certificate.

History. Acts 1935, No. 324, § 43; Pope's Dig., § 2106; A.S.A. 1947, § 73-242; Acts 2019, No. 315, § 2380.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

23-3-205. Issuance of certificate of public convenience and necessity — Terms and conditions — Definitions.

(a) As used in this section:

(1) "Consolidated utility district" means a consolidated utility district as defined in § 14-217-103 that owns or operates an electric system as defined in § 14-217-103; and

(2) "Municipality" means a municipality as defined in § 14-202-102 that:

(A) Owns or operates a municipal electric utility as defined in § 25-20-402; or

(B) Is an owner of an electric project as defined in § 25-20-402.

(b)(1) After conducting a hearing to assess the merits of an application for a certificate of public convenience and necessity under this subchapter, the Arkansas Public Service Commission may grant or

deny all or part of the application upon any terms or conditions the commission finds appropriate to serve the purposes of this subchapter.

(2) The right to a hearing under this section may be waived by the applicant.

(c)(1) Except as provided under subdivision (c)(2) of this section, the commission shall not issue a certificate of public convenience and necessity to any person or corporation that:

(A) Is not a public utility;

(B) Primarily transmits electricity; and

(C) Has not been directed or designated to construct an electric transmission facility from a regional transmission organization.

(2) After the commission conducts a hearing under subdivision (b)(1) of this section for a person or corporation that primarily transmits electricity and has not been directed to construct an electric transmission facility from a regional transmission organization, the commission may grant or deny all or part of the application upon any terms or conditions the commission finds appropriate for the purposes of this subchapter subject to the following considerations:

(A) The commission shall only authorize the person or corporation to contract with a municipality or a consolidated utility district that is not located within the service territory of another public utility;

(B) The commission shall not authorize the person or corporation to serve any customers outside of the boundaries of a municipality or consolidated utility district;

(C) The commission shall not authorize the person or corporation to serve any customers that are otherwise served by, or located within, the service territory of another public utility; and

(D) The commission shall not grant a certificate of public convenience and necessity under this subchapter to a person or corporation if doing so would result in an unreasonable impact on any other public utility or on the customers of any other electric utility in this state that is inconsistent with the public interest as determined by the commission.

History. Acts 1935, No. 324, § 43; Pope's Dig., § 2106; A.S.A. 1947, § 73-242; Acts 1991, No. 812, § 1; 2015, No. 842, § 1; 2019, No. 543, § 1.

Amendments. The 2019 amendment redesignated former (a)(1) and (a)(2) as (b)(1) and (b)(2) respectively; added (a); substituted "subchapter" for "subtitle" in (b)(1); substituted "Except as provided under subdivision (c)(2) of this section, the commission" for "The commission" in (c)(1); rewrote (b) as (c)(1); and added (c)(2).

Subchapter 3 — Merger or Acquisition of Control of Domestic Public Utilities

SECTION.

23-3-303. Applicability.

(a) If a domestic public utility seeks to acquire control of another domestic public utility which is subject to the Arkansas Public Service Commission's jurisdiction in a transaction described in § 23-3-306 for which the filing of a statement would be required, then an application for approval containing any information which the commission may prescribe by rule adopted pursuant to this subchapter shall be filed with and heard by the commission after such notice as the commission may prescribe, and the transaction shall be approved or disapproved based upon the factors enumerated in § 23-3-310, subject to judicial review as provided in § 23-3-313, but the other provisions of this subchapter shall not apply to the transaction.

(b) Provisions of this subchapter shall not apply when voting securities are issued, exchanged, or sold by a domestic public utility upon terms and conditions approved by its board of directors.

History. Acts 1985, No. 343, § 7; A.S.A. 1947, § 73-142.7; Acts 2019, No. 315, § 2381.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (a).

23-3-304. Penalties.

(a) Any person who knowingly does or causes to be done any act, matter, or thing prohibited or declared to be unlawful by this subchapter, or who knowingly omits or fails to do any act, matter, or thing required by this subchapter, or knowingly causes such an omission or failure, shall be punished upon conviction thereof by a fine of not more than five thousand dollars ($5,000) or by imprisonment for not more than two (2) years, or both. In addition, the violation shall be punishable upon conviction by a fine not exceeding five hundred dollars ($500) for each day during which the offense occurs.

(b) Any person who knowingly violates any rule, restriction, condition, or order made or imposed by the Arkansas Public Service Commission under authority of this subchapter shall be guilty of a violation and, in addition to any other penalties provided by law, shall be punished upon conviction by a fine not exceeding five hundred dollars ($500) for each day during which such an offense occurs.

(c) In addition, should any person consummate, by whatever means, the acquisition of any of the voting securities of a domestic public utility in violation of this subchapter, the commission upon finding that one (1) or more of the conditions set forth in § 23-3-310 exist or will exist by virtue of the acquisition, may order the immediate divestiture of so much of the voting securities held by that person as, in the commission's opinion, is necessary to remove the domestic public utility from the control of that person.

History. Acts 1985, No. 343, § 11; A.S.A. 1947, § 73-142.11; Acts 2005, No. 1994, § 454; 2019, No. 315, § 2382.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (b).

23-3-305. Powers of commission.

The Arkansas Public Service Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind any orders or rules which it may find necessary or appropriate to carry out the provisions of this subchapter.

History. Acts 1985, No. 343, § 9; A.S.A. 1947, § 73-142.9; Acts 2019, No. 315, § 2383.

Amendments. The 2019 amendment substituted "orders or rules" for "orders, rules, and regulations".

23-3-307. Statement filed with commission — Contents — Amendments.

(a) The statement to be filed with the Arkansas Public Service Commission as required by § 23-3-306 shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each acquiring party and all affiliates thereof, and:

(A) If the acquiring party is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or

(B) If the acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence, an informative description of the business intended to be done by the acquiring party and its subsidiaries, and a list of all individuals who are or who have been selected to become directors or officers of the acquiring party or who perform or will perform functions appropriate or similar to those positions. The list shall include for each individual the information required by subdivision (a)(1)(A) of this section;

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for that purpose, and the identity of persons furnishing the consideration. However, where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing the statement so requests;

(3) Audited financial information in a form acceptable to the commission as to the financial condition of each acquiring party for the preceding three (3) fiscal years, or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the statement;

(4)(A) Any plans or proposals which an acquiring party may have to liquidate the public utility, to sell its assets, or a substantial part thereof, to merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management.

(B) If any change is contemplated in the investment policy, business, or corporate structure, the contemplated changes and the rationale for them shall be explained in detail.

(C) If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then-current management personnel of the domestic public utility or the person controlling the domestic public utility;

(5) The number of shares of any voting securities which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in § 23-3-306;

(6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understandings with respect to any voting securities in which any acquiring party is involved including, but not limited to, transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any voting securities during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the voting securities;

(9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto; and

(10) Any additional information which the commission may by rule prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest.

(b)(1) If a person required to file the statement referred to in § 23-3-306 is a partnership, limited partnership, syndicate, or other group, the commission may require that the information called for in subdivisions (a)(1)-(10) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls a partner or member.

(2) If any partner, member, person, or acquiring party is a corporation, or if a person required to file the statement referred to in § 23-3-306 is a corporation, the commission may require that the information called for by subdivisions (a)(1)-(10) of this section be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation and each affiliate of such a corporation.

(c) If any material change occurs in the facts set forth in the statement filed with the commission and sent to the domestic public utility pursuant to this subchapter, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commission and sent by the person filing the statement to the domestic public utility within two (2) business days after the person learns of the change.

History. Acts 1985, No. 343, § 3; A.S.A. 1947, § 73-142.3; Acts 2019, No. 315, § 2384.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (a)(10).

23-3-316. Injunctions — Criminal proceedings.

(a) Whenever it shall appear to the Arkansas Public Service Commission, the Attorney General, or a domestic public utility which reasonably believes itself to be the object of a tender offer or attempt to obtain control as described in § 23-3-306, that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or order thereunder, the commission, the Attorney General, or the domestic public utility may bring an action in Pulaski County Circuit Court to enjoin those acts or practices and to enforce compliance with this subchapter or any rule or order thereunder. Upon a proper showing being made, a temporary restraining order, preliminary injunction, or permanent injunction enjoining any such person and all others acting on behalf of or at the discretion of that person shall be granted without bond.

(b) The commission, the Attorney General, and the domestic public utility shall transmit any evidence which may be available concerning those acts or practices or concerning apparent violations of this subchapter to the prosecuting attorney for Pulaski County who, in his or her discretion, may institute appropriate criminal proceedings.

History. Acts 1985, No. 343, § 10; A.S.A. 1947, § 73-142.10; Acts 2019, No. 315, § 2385.

Amendments. The 2019 amendment deleted "regulation" following "rule" twice in the first sentence of (a).

Subchapter 4 — Energy Conservation Endorsement Act of 1977

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-3-405. Authority of commission — Rates and charges — Exemptions.

(a)(1)(A) Except as otherwise stated in this section, the Arkansas Public Service Commission is authorized to propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which cause the companies to incur costs of service and investments which conserve, as well as distribute, electrical energy and existing supplies of natural gas, oil, and other fuels.

(B) The commission is authorized to order, require, promote, or engage in energy conservation programs and measures for the benefit of utility customers who are sixty-five (65) years of age or older or who meet the income eligibility qualifications for the Low Income Home Energy Assistance Program administered by the Arkansas Energy Office of the Division of Environmental Quality.

(2) After proper notice and hearings, the energy conservation programs and measures may be approved and ordered into effect by the commission if the commission determines that the energy conservation programs and measures will be beneficial to the ratepayers of the public utilities and to the public utilities themselves.

(3)(A) In such instances, the commission shall declare that the cost of the energy conservation programs and measures is a proper cost of providing utility service.

(B) At the time the energy conservation programs and measures are approved and ordered into effect, the commission shall also order that the affected public utility company be allowed to increase its rates or charges as necessary to recover from consumers who have not opted out of utility-sponsored energy conservation programs and measures under subdivision (c)(1) of this section any costs incurred

by the public utility company as a result of its engaging in the energy conservation programs and measures.

(b) Nothing in this subchapter shall be construed as limiting or cutting down the authority of the commission to order, require, promote, or engage in other energy conservation programs and measures.

(c)(1)(A) A nonresidential business consumer that is classified within sectors 31 through 33 of the North American Industry Classification System, as it existed on January 1, 2013, or a nonresidential business consumer that is a state-supported institution of higher education may provide notice by mail or email to the commission on or before September 15 of any year of the nonresidential business consumer's decision to opt out of utility-sponsored energy conservation programs and measures and direct the nonresidential business consumer's own energy conservation programs and measures if the nonresidential business consumer:

(i) Satisfies one (1) of the following criteria:

(a) Has a peak electrical demand of at least one megawatt (1 MW) or an annual natural gas usage of seventy thousand million British thermal units (70,000 MMBtu) at a single facility; or

(b) Has multiple facilities with identical ownership in a single public utility's service territory with:

(1) A peak electrical demand that exceeds two hundred kilowatts (200 kW) at each location and an aggregated peak electrical demand of at least one megawatt (1 MW) for all of the locations; or

(2) An annual natural gas usage that exceeds fourteen thousand million British thermal units (14,000 MMBtu) at each location and an aggregated annual natural gas usage of seventy thousand million British thermal units (70,000 MMBtu) for all of the locations; and

(ii) In the five (5) years preceding the notice:

(a) Has not accepted:

(1) The installation of any energy conservation programs and measures by the applicable public utility; or

(2) Financing or direct monetary compensation in the form of a rebate or incentive to enable the installation of any energy conservation programs and measures by the applicable public utility; or

(b) Has accepted but returned to an applicable public utility through a separate payment to the public utility or through payment of rates approved under subdivision (a)(3) of this section any amount received from an applicable public utility calculated from the date of the installation of the last energy conservation program or measure, including any interest and directly attributable rate effects, for:

(1) The installation of any energy conservation programs and measures by the applicable public utility; or

(2) Financing or direct monetary compensation in the form of a rebate or incentive to enable the installation of any energy conservation programs and measures by the applicable public utility.

(B) After proper notice and hearings, the commission may decrease the peak demand requirements under subdivision (c)(1)(A) of

this section, but the commission shall not increase the peak demand requirements under subdivision (c)(1)(A) of this section.

(2) The notice of exemption required under subdivision (c)(1) of this section shall include a sworn affidavit from an authorized employee of the nonresidential business consumer that states either:

(A) That:

(i) The nonresidential business consumer meets the criteria stated in subdivision (c)(1)(A) of this section;

(ii) The nonresidential business consumer has implemented or will implement energy conservation programs and measures or has made or will make an investment designated to provide energy savings for the nonresidential business consumer; and

(iii) The energy conservation programs and measures implemented or to be implemented or the investment made or to be made has provided or is expected to provide energy savings for the nonresidential business consumer in an amount that is at least equal to the energy efficiency goals or standards established by the commission at the time the notice is issued under this subsection; or

(B) That:

(i) The nonresidential business consumer meets the criteria stated in subdivision (c)(1)(A) of this section;

(ii) The nonresidential business consumer has exhausted its opportunity to economically conduct further meaningful and cost-effective energy conservation programs and measures; and

(iii) The nonresidential business consumer is unable to realize adequate benefits by participating in the utility-sponsored energy conservation programs and measures for the reasons stated therein.

(d)(1) Upon receipt of a notice of exemption that meets the requirements of subsection (c) of this section, the commission shall issue an order of compliance stating that the nonresidential business consumer has met the requirements of this section and that the rights and limitations of subdivision (d)(2) of this section apply.

(2) Beginning January 1 next following the commission's order of compliance under subdivision (d)(1) of this section:

(A) The nonresidential customer is not required to participate in any utility-sponsored energy conservation programs and measures required by the commission under this section for the applicable public utility;

(B) The public utility company shall not bill a nonresidential business consumer who has been granted an exemption under this subsection for the rates and charges approved by the commission under subdivision (a)(3) of this section; and

(C) The nonresidential customer is not eligible to participate in any energy conservation programs and measures offered by the public utility company under this section.

(3) An exemption and order of compliance issued under this subsection is permanent until it is withdrawn by the nonresidential business consumer under this section.

(e)(1) A nonresidential business consumer seeking to withdraw an exemption granted under this section shall notify the commission by September 15 of any year.

(2) Upon notification of the withdrawal of an exemption under this subsection, the commission shall notify the public utility company of the withdrawal of the exemption.

(3) Beginning with the January billing cycle in the year next following notice of the withdrawal of an exemption under this subsection:

(A) The public utility company shall begin billing the nonresidential business consumer for the rates and charges that apply at the time the exemption is withdrawn; and

(B) The nonresidential business consumer shall be eligible to participate in any energy conservation programs and measures offered by the public utility company under this section.

(f) The commission shall revise its rules and promulgate new rules only to the extent required to allow the commission to incorporate and comply with subsections (c)-(e) of this section.

History. Acts 1977, No. 748, §§ 3, 5; A.S.A. 1947, §§ 73-2503, 73-2505; Acts 2013, No. 253, § 1; 2015, No. 78, § 1; 2017, No. 309, §§ 1, 2; 2017, No. 1102, §§ 2, 3; 2019, No. 910, § 3240.

A.C.R.C. Notes. The amendment of subdivision (c)(1)(A)(ii)*(b)* of this section by Acts 2017, No. 309, § 2 and No. 1102, § 3 could not be reconciled. Pursuant to § 1-2-207(b), § 23-3-405(c)(1)(A)(ii)*(b)* is set out as amended by Acts 2017, No. 1102. As amended by Acts 2017, No. 309, § 23-3-405(c)(1)(A)(ii)*(b)* read: "*(b)* Has accepted but returned to an applicable public utility through a separate payment to the public utility or through payment of the applicable utility rates any amount received from an applicable public utility calculated from the date of the installation of the last energy conservation program or measure, including any interest and directly attributable rate effects, for:

"*(1)* The installation of any energy conservation programs and measures by the applicable public utility; or

"*(2)* Financing or direct monetary compensation in the form of a rebate or incentive to enable the installation of any energy conservation programs and measures by the applicable public utility."

Amendments. The 2017 amendment by No. 309, in the introductory language of (c)(1)(A), inserted "or a nonresidential business consumer that is a state-supported institution of higher education" and substituted "email" for "electronic mail"; and in the introductory language of (c)(1)(A)(ii)(*b*), inserted "to an applicable public utility through a separate payment to the public utility or through payment of the applicable utility rates" and "received from an applicable public utility calculated from the date of the installation of the last energy conservation program or measure", and deleted "from an applicable public utility" following "effects".

The 2017 amendment by No. 1102 redesignated former (a)(1) as (a)(1)(A); added (a)(1)(B); in (a)(2), inserted "energy conservation" following "hearings, the"; redesignated (3) as (3)(A) and (3)(B); substituted "the energy conservations programs and" for "such conservation" in present (3)(A); in (3)(B), substituted "At the time the energy conservation programs and" for "At the time any such programs or" and inserted "from consumers who have not opted out of utility-sponsored energy conservation programs and measures under subdivision (c)(1) of this section"; in (c)(1)(A)(ii)*(b)*, inserted "to an applicable public utility through a separate payment to the public utility or through payment of rates approved under subdivision (a)(3) of this section" and "received from an applicable public utility calculated from the date of the installation of the last energy conservation program or measure", and deleted "from an applicable public utility" following "effects"; and made stylistic changes.

The 2019 amendment substituted "Arkansas Energy Office" for "Department of Human Services" in (a)(1)(B).

Subchapter 6 — Gas Utilities — Extension Projects

23-3-601. Purpose — Petition for certificate.

(a) The General Assembly finds that the proportion of the state's population that is without access to service by a gas utility exceeds the proportion of the population that is without access to telephone or electric utility service. Therefore, the General Assembly declares it to be the intent and purpose of this subchapter to increase only the availability of natural gas through the procedures provided in this subchapter and not to make the procedures available to electric or telephone utilities.

(b) A gas utility may at any time petition the Arkansas Public Service Commission for a certificate of extension project. By its petition, the gas utility requests commission authorization to commence an extension project, to expend funds on the extension project, and to concurrently seek commission approval of changes in rates and surcharges sufficient to recover, at the time the plant goes into service, the excess expenditures arising out of the extension projects that have been granted certificates. A petition for a certificate shall provide information about the proposed extension project, including without limitation the following:

(1) An estimate of the cost of the extension project broken down into at least labor, materials, and overhead;

(2) A schedule of estimated completion dates;

(3) A brief description of the physical nature of the facilities, including pipe diameter and length of the extension in feet or miles;

(4) Estimated sales volumes, estimated number and types of customers, growth rates, and expected revenues;

(5) A calculation showing the amount of excess expenditures the gas utility expects to incur;

(6) A detailed description of the economic benefit to the gas utility and the gas utility's existing ratepayers; and

(7) An estimate of:

(A) The surcharge for each class of customer consistent with the most recent determination by the commission in its order addressing the gas utility's most recent application for a general change or modification in its rates and charges; or

(B) The increase in rates for each class of customer if the investment is to be recovered by the gas utility under a formula rate review

mechanism pursuant to the Formula Rate Review Act, § 23-4-1201 et seq.

History. Acts 1987, No. 150, § 2; 2017, No. 280, § 1.

Amendments. The 2017 amendment deleted "natural" preceding "gas utility" in the first sentence of (a); in the second sentence of (b), inserted the second occurrence of "extension" and substituted "extension projects that have been granted certificates" for "certificated extension projects"; added (b)(6) and (b)(7); and made stylistic changes.

23-3-602. Definitions.

As used in this subchapter:

(1) "Certificate of extension project" or "certificate" means the Arkansas Public Service Commission order authorizing a gas utility seeking the order to undertake an extension project. The certificate shall be issued contemporaneously with the commission order approving the imposition of rates and surcharges sufficient to recover the excess expenditures arising out of those extension projects that have been granted certificates and completed pursuant to this subchapter;

(2) "Commission" means the Arkansas Public Service Commission;

(3) "Excess expenditures" means the difference between:

(A) Expenditures made by a gas utility for extensions of service to areas not served by a gas utility;

(B) The sum of the investment allowable under a gas utility's extension policy, plus amounts, if any initially available from other applicable sources, which include without limitation funds from:

(i) The Arkansas Economic Development Council or its successor;

(ii) Industrial development bonds, municipal bonds, city bonds, or improvement district bonds;

(iii) Special funds which may be created by particular commission orders for individual gas utilities in rate cases or other proceedings; and

(iv) Customer-provided contributions in aid of construction;

(4) "Extension project" means any extension proposed by a gas utility that is intended to serve areas of Arkansas not served by any gas utility or within the range of the extension policy of any gas utility, which will result in excess expenditures if constructed, and for which the gas utility seeks authorization from the commission to begin, together with the authorization to change its rates and surcharges to recover the excess expenditures as provided in this subchapter;

(5) "Gas utility" means any natural gas public utility jurisdictional to the commission; and

(6)(A) "Surcharge" means a charge that the commission may authorize a gas utility to impose on its customers to recover, at the time the gas utility plant goes into service, the excess expenditures arising out of the extension projects that have been granted certificates.

(B) The amount of the surcharge to be added to the gas utility's rate under subdivision (6)(A) of this section shall be calculated under traditional cost-of-service principles so as to produce the annual

revenues equal to the additional annualized revenue requirement to which the gas utility would be entitled had the excess expenditures been included in the gas utility's most recent rate determination by the commission.

History. Acts 1987, No. 150, § 1; 1997, No. 540, § 45; 2017, No. 280, § 1.

Amendments. The 2017 amendment deleted "unless the context otherwise requires" from the end of the introductory language; substituted "granted certificates" for "certificated" in (1); deleted (3) and redesignated the remaining subdivisions accordingly; substituted "commission" for "Arkansas Public Service Commission" in (5); rewrote (6); and made a stylistic change.

23-3-603. Grant of certificate generally.

(a) The Arkansas Public Service Commission shall grant a certificate if it finds that the proposed extension project is of economic benefit to the gas utility and its existing ratepayers and is in the public interest.

(b) Once the certificate has been granted by the commission, including the approval of the amount and allocation of rates and surcharges, the gas utility may begin construction and may expend funds on the extension project that has been granted a certificate.

History. Acts 1987, No. 150, § 3; 2017, No. 280, § 1.

Amendments. The 2017 amendment added the (a) and (b) designations; in (a), inserted "its existing ratepayers and" and deleted the second sentence; and, in (b), inserted "by the commission" and substituted "extension project that has been granted a certificate" for "certificated extension project".

23-3-604. Rates and tariffs.

(a)(1) Once an extension project that has been granted a certificate is placed into service and is used and useful, the gas utility may collect the excess expenditures through a rate or surcharge approved by the Arkansas Public Service Commission. The tariff and rate filing made at the time of the certificate application shall include estimated excess expenditures upon which the commission may grant the certificate.

(2) The commission may subsequently modify the previously approved rates in any reasonable manner if the actual total costs and excess expenditures differ significantly from the estimated total costs and excess expenditures.

(3) If the actual total costs and excess expenditures significantly exceed the estimated costs and excess expenditures and the difference is caused by imprudence or other unsatisfactory causes, the commission may disallow recovery of a portion of the actual excess expenditures in the approved rates.

(b) The rate or surcharge implemented under this section remains effective until the implementation of new rate schedules in connection with the next general rate filing of the gas utility wherein such extension project investments can be included in the gas utility's base rate schedules.

(c) The rate or surcharge for each class of customer shall be determined consistent with the most recent determination by the commission in its order addressing the gas utility's most recent application for a general change or modification in its rates and charges.

History. Acts 1987, No. 150, § 4; 2017, No. 280, § 1.

Amendments. The 2017 amendment rewrote the first sentence of (a)(1); deleted "and tariffs" following "rates" in (a)(2); substituted "If the" for "In the event that" in (a)(3); rewrote (b) and (c); and deleted former (d).

23-3-605. Conditions, limitations on grant of certificates.

Certificates shall be granted under this subchapter under the following provisions and conditions:

(1)(A) Only proposed extension projects are eligible for recovery of the cost of excess expenditures under this subchapter.

(B) Proposed extension projects are those for which neither actual construction activity has begun nor expenditures made, other than for planning the extension project, at the time the petition for the certificate is initially filed with the Arkansas Public Service Commission;

(2) Certificates shall be granted under this subchapter only for proposed extension projects that will serve areas not served by any gas utility at the time of the filing of the petition for the certificate;

(3) Certificates shall be granted under this subchapter only if the Arkansas Public Service Commission determines the extension project is of economic benefit to the gas utility and its existing ratepayers and is in the public interest;

(4) Certificates shall not be granted under this subchapter to recover excess expenditures incurred in replacing existing pipelines, equipment, or plants, unless the replacement is necessary for adequate gas supply for the proposed extension project;

(5) When the Arkansas Public Service Commission has granted more than one (1) certificate to a gas utility, the Arkansas Public Service Commission may determine prospectively the sequence in which the gas utility shall commence work on pending extension projects based on whatever reasonable criteria the Arkansas Public Service Commission develops. However, once construction has begun on any given extension project, the Arkansas Public Service Commission determination shall not serve to postpone or defer construction;

(6)(A) There is a limitation on the total annual dollar recovery of excess expenditures to be recovered under § 23-3-604 through rates or surcharges. The limitation is a dollar amount that equals five-tenths of one percent (0.5%) of the gas utility's gross plant at original cost used in determining the gas utility's most recent application for a general change in rates and charges.

(B) As used in this subdivision (6), "gross plant" does not include construction work in progress or portions of extension projects that have been granted certificates and are currently included in the gas utility's base rates; and

(7) With respect to any extension project funded under this subchapter to provide service to a project developer that also receives funds or incentives provided by the Arkansas Economic Development Commission, any agreement between a project developer and the Arkansas Economic Development Commission shall include a provision that any funds provided by a surcharge to recover the cost of an extension project under this subchapter shall be recovered from any project developer that failed to take natural gas service from such an extension project and refunded to ratepayers as directed by the Arkansas Public Service Commission.

History. Acts 1987, No. 150, § 5; 2017, No. 280, § 1.

Amendments. The 2017 amendment redesignated (1) as (1)(A) and (B); inserted "extension" preceding "project" in (1)(B); inserted (3); redesignated former (3)-(5) as (4)-(6); in (4), substituted "excess expenditures" for "costs" and added "unless the replacement is necessary for adequate gas supply for the proposed extension project"; inserted "extension" twice in (5); rewrote (6); added (7); and made stylistic changes.

23-3-606. Petitions not considered rate applications.

Petitions for a certificate under this subchapter are not general rate applications.

History. Acts 1987, No. 150, § 6; 2017, No. 280, § 1.

Amendments. The 2017 amendment substituted "under" for "pursuant to".

23-3-607. Denial of certificate.

Denial of a certificate under this subchapter does not preclude recovery of the cost of excess expenditures under rates or surcharges, or both, approved pursuant to a gas utility's general rate case or other proceeding in which the Arkansas Public Service Commission finds recovery of the cost of excess expenditures through rates or surcharges appropriate.

History. Acts 1987, No. 150, § 7; 2017, No. 280, § 1.

Amendments. The 2017 amendment substituted "does not" for "shall not".

CHAPTER 4

REGULATION OF RATES AND CHARGES GENERALLY

SUBCHAPTER.

Subchapter 1 — General Provisions

23-4-101. Authority of commission or department to establish rates — Exceptions.

(a) With respect to the particular public utilities and matters over which each agency has jurisdiction, the Arkansas Public Service Commission or the Arkansas Department of Transportation shall have the power, after reasonable notice and after full and complete hearing, to enforce, originate, establish, modify, change, adjust, and promulgate tariffs, rates, joint rates, tolls, and schedules for all public service corporations, companies, and utilities and all rules with reference thereto and orders directing the performance of any duties devolving on the company, utility, common carrier, or public service corporation under the terms of this act.

(b) Whenever the commission or the department having jurisdiction, after notice and hearing, finds any existing rates, tolls, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of the law, the commission or the department shall, by an order, fix reasonable rates, joint rates, tariffs, tolls, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, inadequate, or otherwise in violation of any of the provisions of this law.

(c)(1) Nothing in this act shall authorize either the commission or the department to make any rule or order whatever to be effective within the limits of any municipality of this state with reference to any tariff, rate, toll, schedule, duty, or action of any public service corporation, company, or public utility operating within the municipality as a street railroad; telephone company; gas company; pipeline company for transportation of oil, gas, or water; electrical company, for the generation or distribution, sale, or supply of electricity for heat, light, or power; water company; or hydroelectric company.

(2) It is the intention of this act, more particularly expressed in other provisions of this act, to confer upon the municipal councils and city commissions of this state jurisdiction as to these matters, so far as they are effective within the limits of any municipality of this state.

History. Acts 1919, No. 571, § 8; C. & M. Dig., § 1619; Acts 1921, No. 124, § 6; Pope's Dig., § 2005; A.S.A. 1947, § 73-119; Acts 2017, No. 707, § 109; 2019, No. 315, §§ 2386, 2387.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "and regulations" following "rules" in (a); and deleted "regulation" following "rule" in

(c)(1).

23-4-103. Rates and rules to be reasonable.

All rates made, demanded, or received by any public utility, for any product or commodity furnished, or to be furnished, or any service rendered or to be rendered, and all rules made by any public utility pertaining thereto shall be just and reasonable, and to the extent that the rates or rules may be unjust or unreasonable, are prohibited and declared unlawful.

History. Acts 1935, No. 324, § 10; Pope's Dig., § 2073; A.S.A. 1947, § 73-204; Acts 2019, No. 315, § 2388.

Amendments. The 2019 amendment substituted "Rates and rules" for "Rates, rules, and regulations" in the section heading and made a similar change in the section; and deleted "and regulations" following "rules".

23-4-106. Rate schedules — Public inspection.

Every public utility shall keep copies of its rate schedules open to public inspection under such rules and at such places as the commission may prescribe.

History. Acts 1935, No. 324, § 11; Pope's Dig., § 2074; A.S.A. 1947, § 73-205; Acts 2019, No. 315, § 2389.

Amendments. The 2019 amendment deleted "and regulations" following "rules".

23-4-110. Changes in rates under Acts 1919, No. 571, and Acts 1921, No. 124.

(a)(1) No person, firm, or corporation subject to the provisions of this act shall modify, change, cancel, or annul any rate, joint rates, fares, classifications, charges, or rentals except after thirty (30) days' notice to the public and to the municipal council or city commission, as the case may be, depending on the utility affected and the action proposed.

(2) The notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges shall go into effect.

(b) The particular regulatory body having jurisdiction of the matter under this act may enter an order prohibiting such a person, firm, or corporation from putting the proposed new rates into effect pending hearing and final decision of the matter by the regulatory body.

(c)(1) Whenever there is filed with the regulatory body any schedule proposing a change in any rates, charges, or rules, the regulatory body shall have authority, either upon complaint or upon its own initiative, and upon reasonable notice, to enter upon a hearing concerning the propriety of the rate, charge, or rule.

(2) Pending the hearing and the decision thereon, the regulatory body, upon filing of the schedule or after the schedule should be filed, and upon delivering to the carriers or public service corporations affected thereby a statement in writing of its reasons for such a

suspension, may suspend the operation of the schedule and defer the use of the rate or charge.

(3) After a full hearing, whether completed before or after the rate, charge, or rule goes into effect, the regulatory body may make such orders in reference to the rate, fare, charge, or rule as shall be deemed proper and just.

History. Acts 1919, No. 571, § 7; C. & M. Dig., § 1612; Acts 1921, No. 10, § 1; 1921, No. 124, § 5; Pope's Dig., §§ 1937, 2004; A.S.A. 1947, § 73-117; Acts 2019, No. 315, §§ 2390, 2391.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (c)(1) and made similar changes in (c)(3).

Subchapter 2 — Utilities Generally

SECTION.

23-4-209. Transition costs — Definition.

(a)(1) As used in this section, "transition costs" means those costs, investments, or unfunded mandates, either recurring or nonrecurring, incurred by an electric utility after July 30, 1999, that are found to have been necessary to carry out the electric utility's responsibilities associated with efforts to implement retail open access or were mandated by statute or rule and are not otherwise recoverable.

(2) In no event shall transition costs include retirement or severance programs, marketing or promotional activities, professional or advisory services, or legal costs associated with any competitive strategy.

(3) In no event shall costs that are allowable in the utility's regulated cost of service and rates be included as transition costs, and the electric utility shall be required to demonstrate that its requested transition cost recovery does not contain amounts that are otherwise reflected in current rate levels.

(4) Additionally, no electric utility shall recover transition costs unless approved by the Arkansas Public Service Commission pursuant to this chapter.

(b)(1) An electric utility shall be allowed to recover transition costs incurred no later than January 1, 2002, as may be determined by the commission after notice and hearing.

(2) The recovery shall be by a customer transition charge during a period of time ending thirty-six (36) months after February 21, 2003.

(3) The customer transition charges shall be subject to annual review by the commission. Costs included in the charges shall be prudent, reasonable, and directly caused by Acts 1999, No. 1556, and rules and orders adopted by the commission to implement that act.

(c) An electric utility shall have a right to recover from its customers any nuclear decommissioning costs, as determined by the commission, associated with the utility's generating assets. The commission shall retain jurisdiction sufficient to authorize the recovery of those costs.

History. Acts 2003, No. 204, § 9; 2019, No. 315, § 2392.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a)(1).

Subchapter 4 — Utilities — Rate Changes and Surcharges Generally

SECTION.

23-4-422. Cost allocation — Definition.

(a)(1) The Arkansas Public Service Commission shall establish and regulate the rates and charges of a public utility under this subchapter and shall allocate or assign costs among all classes of customers of the public utility.

(2) In determining the rates for utility services and the cost allocation among all of a public utility's classes of customers, the commission shall:

(A) Consider the costs and expenses incurred by the public utility in providing the utility services to customers in each class;

(B) Consider the economic impact of the proposed rates and charges for utility services by giving equal consideration to each class of customers; and

(C) Make findings that are based on substantial evidence.

(b) Notwithstanding the commission's authority to otherwise determine and fix rates for all classes of customers, including allocating or assigning costs and designing rates, if the commission finds that it will be beneficial to economic development or the promotion of employment opportunities, and that it will result in just and reasonable rates for all classes of customers, the commission shall determine rates and charges for utility services that:

(1) For the class of customers with the highest level of consumption per customer which has rates that include a demand component, and any successors to such class, as they existed on January 1, 2015, ensure that all costs and expenses related to demand and capacity are identified and allocated on a demand basis and recovered from customers in those classes through a demand rate component and not through a volumetric rate component unless the commission determines that the rates should be adjusted under subsections (e) and (f) of this section;

(2) For the retail jurisdiction rate classes, ensure that:

(A) All electric utility production plant, production-related costs, nonfuel production-related costs, purchased capacity costs, and any energy costs incurred resulting from the electric utility's environmental compliance are classified as production demand costs; and

(B)(i) Production demand costs are allocated to each customer class pursuant to the average and excess method shown in Table 4-10B on page 51 of the 1992 National Association of Regulatory Utility Commissioners Electric Utility Cost Allocation Manual, as it existed on January 1, 2015, using the average of the four (4) monthly

coincident peaks for the months of June, July, August, and September for each class for the coincident peak referenced in Table 4-10B of the manual, as it existed on January 1, 2015, or any subsequent version of the manual to the extent it produces an equivalent result.

(ii) Subdivision (b)(2)(B)(i) of this section does not prescribe an allocation for a wind production plant; and

(3)(A)(i) For purposes of allocation of natural gas distribution plant costs, including costs in distribution mains and related distribution plant expenses, among the state's retail jurisdiction rate classes, ensure that each natural gas public utility classifies all natural gas distribution plant costs as customer-related or capacity-related.

(ii) For purposes of subdivision (b)(3)(A)(i) of this section, the natural gas distribution plant costs shall include:

(a) Amounts charged to account numbers 374 through 387, as defined under the account numbering system in the Uniform System of Accounts prescribed for natural gas public utilities by the rules of the commission; and

(b) Related depreciation, return on investment, property insurance and taxes, excluding state and federal income taxes, and fixed operation and maintenance expense charged to account numbers 870 through 894, as defined under the account numbering system in the Uniform System of Accounts prescribed for natural gas public utilities by the rules of the commission, including all labor-related costs for the expenses described in this subdivision (b)(3)(A).

(iii) To develop a cost allocation method under this section for natural gas utilities, the commission shall use the Gas Distribution Rate Design Manual, June 1989 edition, as prepared by the National Association of Regulatory Utility Commissioners, as it existed on January 1, 2015, or any subsequent version of the manual, to the extent it produces an equivalent result.

(B)(i) The customer-related natural gas distribution plant costs shall be allocated to each customer class based on the number of customers in each class.

(ii) The customer-related portion of natural gas distribution plant costs related to account numbers 374 through 376, as defined under the account numbering system in the Uniform System of Accounts prescribed for natural gas public utilities by the rules of the commission, shall be the percentage of the average cost of all mains that is represented by the average cost of the minimum size main and computed using a cost allocation method based upon the predominant size main that is installed by the natural gas public utility that is at least two inches (2″) in diameter, with the investment costs of the predominant size mains set as the minimum size.

(iii) The customer-related portion of natural gas distribution costs related to account numbers 377 through 387, as defined under the account numbering system in the Uniform System of Accounts prescribed for natural gas public utilities by the rules of the commission, shall be computed using a study that reflects the investments

required to meter, regulate, and connect each class of customers to the natural gas utility's system.

(iv) Any remaining natural gas distribution plant costs shall be classified as capacity-related costs.

(C)(i) Except for natural gas distribution plant costs related to account numbers 380 through 385, as defined under the account numbering system in the Uniform System of Accounts prescribed for natural gas public utilities by the rules of the commission, the natural gas distribution plant costs classified as capacity-related costs shall be allocated to the customer classes based on the contribution to peak day demand that is made by each customer class.

(ii) As used in subdivision (b)(3)(C)(i) of this section, "peak day demand" means the computed quantity of gas that would be supplied to each customer class calculated using the coldest day in a recent thirty-year period for each gas utility.

(c) In an application for a general change or modification in a public utility's rates and charges under this subchapter:

(1) A public utility may present evidence that demonstrates that the implementation of rates under subsection (b) of this section will result in rates that will be beneficial to economic development or the promotion of employment opportunities and result in just and reasonable rates for all classes of customers; and

(2) A public utility shall present evidence of whether or not rate design in subdivision (b)(1) of this section results in an increase to the base rate charges that are billed to customers in the affected class of more than ten percent (10%) as compared to the then currently approved base rate charges of the applicable rate schedules.

(d) Unless the commission adjusts the rates under subsection (e) or subsection (f) of this section, the commission shall by order establish and design rates, allocate or assign costs to all classes of customers, and regulate the rates for each class of customers of a public utility according to this section.

(e) Pursuant to the commission's authority to otherwise determine and fix rates for all classes of customers, including allocating or assigning costs and designing rates, the commission may adjust rates under subdivisions (b)(2) and (3) of this section if the commission finds:

(1) It is in the public interest;

(2) It is necessary to produce just and reasonable rates; or

(3) Implementation of rates under subdivisions (b)(2) and (3) of this section will result in rates that are not beneficial to economic development or the promotion of employment opportunities.

(f) If implementation of rates under subdivision (b)(1) of this section will result in an increase in the base rate charges billed to customers in the affected class of more than ten percent (10%) as compared to the currently approved base rate charges of the applicable rate schedules, the commission may adjust the rates to ensure that the greatest increase in the base rate charges billed to customers in the affected class is ten percent (10%) as compared to the then currently approved base rate charges of the applicable rate schedules.

(g) If the commission makes any adjustment under subsections (e) and (f) of this section, the commission shall provide in an order the rationale for determining that rates under subsection (b) of this section may not be just and reasonable and the rationale for determining that the rates adjusted in the order of the commission are just and reasonable and in the public interest. The commission shall make its findings based on substantial evidence.

(h) An electric cooperative corporation established under the Electric Cooperative Corporation Act, § 23-18-301 et seq., is not subject to this section.

(i) Effective March 27, 2015, the cost allocation provisions of this section shall apply to any pending application for a change in general rates and charges.

History. Acts 2015, No. 725, § 2; 2017, No. 334, § 3.

Amendments. The 2017 amendment redesignated part of (b)(2)(A) as the introductory language of (b)(2); in (b)(2)(A), deleted "all" preceding "nonfuel" and added "and" at the end; redesignated former (b)(2)(B) and (b)(2)(C) as (b)(2)(B)(i) and (b)(2)(B)(ii); in (b)(2)(B)(i), substituted "Production" for "Ensure that production" and inserted "Electric Utility Cost Allocation"; and substituted "(b)(2)(B)(i)" for "(b)(2)(B)" in (b)(2)(B)(ii).

Subchapter 5 — Utilities — Special Surcharges

23-4-501. Authority to recover costs through interim rate schedule.

(a)(1) Upon a proper filing with the Arkansas Public Service Commission, a public utility shall be permitted to recover in a prompt and timely manner all investments and expenses through an interim surcharge, if the investments or expenses:

(A) Are not currently being recovered in existing rates;

(B) Are reasonably incurred;

(C) Were not reasonably known and measurable at a time that allowed for a reasonable opportunity for the inclusion and consideration of the investments or expenses for recovery in the public utility's last general rate case;

(D) Are incurred by the public utility to comply with legislative or administrative rules or requirements;

(E) Relate to the protection of the public health, safety, or the environment;

(F) Cannot otherwise be recovered in a prompt and timely manner; and

(G) Are any of the following:

(i) Mandatory;

(ii) A condition of continued operation of a utility facility; or

(iii) Previously approved by the commission.

(2) The interim surcharge shall be effective until the implementation of new rate schedules in connection with the next general rate filing of the public utility in which such investments or expenses can be included in the public utility's base rate schedule.

(3) However, the costs to be recovered through such an interim surcharge described in subdivisions (a)(1) and (2) of this section shall not include increases in the cost for employment compensation or benefits as a result of legislative or regulatory action.

(b)(1) A public utility shall be permitted to recover, through an interim surcharge, the allowance for funds used during construction that would otherwise be accrued and capitalized that is incurred during the construction of facilities and equipment required for compliance with such legislative or administrative rules or requirements, provided that any such allowance for funds used during construction has not been capitalized or otherwise included in the utility's currently effective rates.

(2) The public utility shall not capitalize or otherwise recover through rates any allowance for funds used during construction incurred in connection with investments described in subdivision (b)(1) of this section when the associated financing costs are included in an interim surcharge.

History. Acts 1981, No. 310, § 1; A.S.A. 1947, § 73-217.1; Acts 2015, No. 1000, § 2; 2019, No. 315, §§ 2393, 2394.

Amendments. The 2019 amendment deleted "regulations" following "rules" in (a)(1)(D) and (b)(1).

23-4-507. Modification or disapproval of surcharge.

(a) After its investigation and hearing thereon, the Arkansas Public Service Commission may modify or disapprove all or any portion of the surcharge upon a finding that:

(1) The investments or expenses were not reasonably incurred to comply with legislative or administrative rules or requirements;

(2) The investments or expenses do not relate to the protection of the public health, safety, or the environment;

(3) The investments or expenses were not substantiated;

(4) The amount of the surcharge has been erroneously calculated;

(5) The investments or expenses are already being recovered in existing rates;

(6) The investments or expenses were reasonably known and measurable at a time that allowed for a reasonable opportunity for their inclusion and consideration for recovery in the public utility's last general rate case;

(7) The investments or expenses were not reasonably incurred;

(8) The investments or expenses can otherwise be recovered in a prompt and timely manner;

(9) The allocation of the surcharge among the customers of the public utility is unreasonable; or

(10) The investments or expenses were not:

(A) Mandatory;

(B) A condition of continued operation of a utility facility; or

(C) Previously approved by the commission.

(b)(1) If the commission determines that the allocation of the surcharge among the customers of the utility should be modified, it shall fix and determine the appropriate allocation among the utility's customers which shall be applied prospectively.

(2) The commission shall further direct the utility to credit or charge, as the case may be, the affected classes of customers whose surcharges were determined to be improperly allocated for the period between the effective date of the surcharge and the effective date of the modification. As to those classes of customers entitled to credits, the utility also shall pay interest on those credits, as applicable.

(c) If the commission determines that all or any portion of the proposed surcharge should be disapproved under subsection (a) of this section, the commission shall determine the just and reasonable amount of the surcharge to be charged or applied by the public utility after the time the proposed surcharge took effect. In the same order, the commission shall fix the amounts, plus interest, if any, to be refunded to the utility's customers.

History. Acts 1981, No. 310, § 2; 1983, No. 262, § 1; A.S.A. 1947, § 73-217.2; Acts 2015, No. 1000, §§ 5, 6; 2019, No. 315, § 2395.

Amendments. The 2019 amendment deleted "regulations" following "rules" in (a)(1).

Subchapter 6 — Railroads and Other Carriers Generally

23-4-601. Construction of §§ 23-4-602, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101.

Nothing in §§ 23-4-602, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101 shall be so construed as to amend or repeal any act prior to May 28, 1907, in force, nor to curtail or limit the powers and duties of the Arkansas Department of Transportation.

History. Acts 1907, No. 422, § 8, p. 1137; C. & M. Dig., § 1617; Pope's Dig., § 1942; A.S.A. 1947, § 73-1415; Acts 2017, No. 707, § 110.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-602. Violations of §§ 23-4-601, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101, tariff of charges, or rules of department — Penalties — Recovery.

(a) If any person or corporation operating a railroad or express company in this state or any receiver, trustee, or lessee of any such person or corporation violates any of the provisions of §§ 23-4-601, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101, or aids or abets therein, or violates the tariff of charges as fixed by the Arkansas Department of Transportation or any of the rules regarding railroads or express companies as made by the department and for which there is no other penalty prescribed, then such a person or corporation, receiver, trustee, or lessee shall be liable to a penalty of not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000) for each violation of §§ 23-4-601, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101 or such tariff of charges or rules and regulations.

(b)(1) The penalty may be recovered by an action to be brought in the name of the State of Arkansas in the county in which such a violation may occur.

(2)(A) The department shall institute actions for the recovery of the penalties prescribed in §§ 23-4-601, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101 through the prosecuting attorney of the proper district.

(B) The prosecuting attorney shall be allowed a fee by the court not to exceed twenty-five percent (25%) of the amount collected.

(C) If any prosecuting attorney neglects for fifteen (15) days after notice to bring suit, the department may employ some other attorney at law to bring the suit, who shall be allowed a fee therefor to be fixed by the court not to exceed twenty-five percent (25%) of the amount collected.

(3) No suit shall be dismissed or compromised without the consent of the court and of the department. In such cases the prosecuting attorney shall not interfere.

(c) In all trials of cases brought for violation of any tariff of charges by the department, it may be shown in evidence that the tariff so fixed was unjust.

(d) Nothing in this section shall be so construed as to in any manner interfere with any action for damages which may be provided by law.

History. Acts 1907, No. 422, § 7, p. 1137; C. & M. Dig., § 1695; Pope's Dig., § 1998; A.S.A. 1947, § 73-1414; Acts 2017, No. 707, § 111.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-606. Continuous railroad lines.

(a) In all cases where there is, by physical connection of railroads, a continuous line of railway communication between railroad stations within this state, whether such stations are on railroads operated by one and the same company or corporation or on railroads operated by different and independent companies or corporations, it shall be the duty of the Arkansas Department of Transportation, to and from such stations, to make just and reasonable rates for freight, express, and passenger traffic, to be observed by all persons, companies, or corporations operating any railroad or engaged in transporting persons or property as express or freight in this state.

(b)(1) All persons, companies, or corporations operating any railroad in this state that forms part of a continuous line of railroad communication to any point in this state shall issue through-passenger tickets and check baggage through to and from points on the continuous line of communication at through-rates and fares.

(2) All freight and traffic carried wholly within this state to and from stations on lines of continuous carriage aforesaid shall be waybilled through at through-rates and tolls from point of departure to point of arrival without being rebilled at junction points. In cases of carload freights, the forwarding carrier shall receive and forward the same in cars in which the freight is tendered without breaking bulk of package.

History. Acts 1903, No. 130, §§ 2, 3, p. 218; C. & M. Dig., §§ 860, 1646; Pope's Dig., §§ 1064, 1967; A.S.A. 1947, §§ 73-1408, 73-1409; Acts 2017, No. 707, § 112.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-607. Connecting railroad lines — Division of charges.

If any two (2) or more connecting lines of railroad in this state fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers, or cars over their lines, the Arkansas Department of Transportation shall make the division and shall fix the pro rata part of such charges to be received by each of the connecting lines.

History. Acts 1903, No. 130, § 4, p. 218; C. & M. Dig., § 1647; Pope's Dig., § 1968; A.S.A. 1947, § 73-1410; Acts 2017, No. 707, § 113.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-608. Penalties for violations of §§ 23-4-606 and 23-4-607 — Actions to recover penalties.

(a) If any person or corporation operating a railroad or express company in this state, or any receiver, trustee, or lessee of any such person or corporation, violates any of the provisions of §§ 23-4-606 and 23-4-607, or aids or abets therein, or violates the tariff of charges as fixed by the Arkansas Department of Transportation or any of the rules regarding railroads or express companies as made by the department, and for which there is no other penalty prescribed in §§ 23-4-606 and 23-4-607, then the person or corporation, receiver, trustee, or lessee shall be liable to a penalty of not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000) for each violation of §§ 23-4-606 and 23-4-607, or such tariff of charges or rules and regulations.

(b)(1) The penalty may be recovered by an action to be brought in the name of the State of Arkansas in the county in which the violation may occur.

(2)(A) The department shall institute that action and actions for the recovery of the penalties prescribed in §§ 23-4-606 and 23-4-607 through the prosecuting attorney of the proper district.

(B) The prosecuting attorney shall be allowed a fee by the court not to exceed twenty-five percent (25%) of the amount collected.

(C) If any prosecuting attorney neglects for fifteen (15) days after notice to bring suit, the department may employ some other attorney at law to bring the suit who shall be allowed a fee therefor to be fixed by the court not to exceed twenty-five percent (25%) of the amount collected. In such a case, the prosecuting attorney shall not interfere.

(3) No action for the recovery of penalties shall be dismissed or compromised without the consent of the court and of the department.

(c) In all trials of cases brought for a violation of any tariff charges by the department, it may be shown in defense that the tariff so fixed was unjust.

(d) Nothing in this section shall be so construed as to in any manner interfere with any action for damages which may be provided by law.

History. Acts 1903, No. 130, § 5, p. 218; A.S.A. 1947, §§ 73-1414, 73-1414n; Acts 2017, No. 707, § 114.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-609. Connecting railroad lines under one management.

(a) Where in this state two (2) or more connecting lines of railroad are operated by, or under, one (1) management or company, or where the

majority of the stock of each of two (2) or more railroad companies whose tracks connect is owned or controlled, either directly or indirectly, by any one (1) of these companies, the lines of railroad of all these companies, in respect to the application and making of rates within the meaning and intent of §§ 23-4-601, 23-4-602, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101 shall be considered as constituting but one and the same railroad.

(b) Rates for the carriage of freight or passengers over these railroads or any portion of them shall be computed upon a continuous-mileage basis, the same as upon the line of a single railroad company, whether these railroads have separate boards of directors or not.

(c) The Arkansas Department of Transportation shall have the power to fix different rates for different lines bearing the relation to each other described in this section whenever it finds such action necessary to do justice.

History. Acts 1907, No. 422, § 1, p. 1137; C. & M. Dig., § 861; Pope's Dig., § 1065; A.S.A. 1947, § 73-1411; Acts 2017, No. 707, § 115.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (c).

23-4-610. Railroads — Through-freight rates and regulations.

(a) The Arkansas Department of Transportation shall have power, and it is its duty, to investigate all through-freight rates and regulations on railroads in Arkansas.

(b)(1) When the through-freight rates and regulations are, in the opinion of the department, excessive or levied in violation of the interstate commerce law or the rules and regulations of the Interstate Commerce Commission [abolished], the officials of the railroads are to be notified of the facts and requested to reduce the rates or make the proper correction, as the case may be.

(2) When the rates are not changed or the proper corrections are not made according to the request of the department, the department is to notify the Interstate Commerce Commission [abolished] and to apply to it for relief.

History. Acts 1907, No. 422, § 2, p. 1137; C. & M. Dig., § 1630; Pope's Dig., § 1952; A.S.A. 1947, § 73-1412; Acts 2017, No. 707, § 116.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-611. Railroads — Short lines.

(a) Railroad companies having roads not exceeding fifty (50) miles in length may charge for loading, carrying, and unloading freights at a rate of not more than forty cents (40¢) per one hundred pounds (100 lbs.) for any distance.

(b)(1) The rates charged by any company may be reduced by the Arkansas Department of Transportation whenever it appears that the

net annual profits of the company exceed ten percent (10%) of the amount of capital actually invested.

(2) However, the rates shall not be reduced so as to reduce the net annual profits of such a company below ten percent (10%) of the amount of its capital actually invested.

(c)(1) If any railroad company shall charge more than the rates named in this section, the person paying the charges may recover from that railroad company five (5) times the sum so charged, together with the costs of the action, by action before a justice of the peace or other court having jurisdiction.

(2) Service of summons in such an action may be made by delivering a copy of the summons to any agent of the company.

History. Acts 1881, No. 42, §§ 1-3, p. 78; C. & M. Dig., §§ 869-871; Pope's Dig., §§ 1073-1075; A.S.A. 1947, §§ 73-1421 — 73-1423; Acts 2017, No. 707, § 117.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (b)(1).

23-4-615. Railroads — Sleeping car tariffs.

The Arkansas Department of Transportation is authorized and it is its duty to adopt, change, or make reasonable and just rates, charges, and regulations to govern and regulate sleeping car tariffs and service in order to correct abuses and prevent unjust discrimination and extortion in the rates for sleeping cars.

History. Acts 1907, No. 422, § 4, p. 1137; C. & M. Dig., § 1634; Pope's Dig., § 1955; A.S.A. 1947, § 73-1413; Acts 2017, No. 707, § 118.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-620. Notice of rate changes.

(a) Unless the Arkansas Department of Transportation otherwise orders, no public utility shall make any change in any rate duly established under this act except after thirty (30) days' notice to the department. This notice shall plainly state the change proposed to be made in the rates then in force and the time when the changed rates will go into effect.

(b) The utility shall also give notice of the proposed changes to other interested parties as the department in its discretion may direct.

(c) The department, for good cause shown, may allow changes in rates without requiring the thirty (30) days' notice, under such conditions as it may prescribe. All allowed changes shall be immediately indicated upon its schedules by the public utility.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 119.

Amendments. The 2017 amendment substituted "Department of Transporta-

tion" for "State Highway and Transportation Department" in (a).

23-4-622. Investigation of rate changes.

Whenever there is filed with the Arkansas Department of Transportation by any public utility any schedule stating a new rate, the department, either upon complaint or upon its own motion and upon reasonable notice, may enter upon any investigation concerning the lawfulness of the rates.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 120.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-623. Suspension of proposed rates.

Pending its investigation and the decision thereon, the Arkansas Department of Transportation by written order at any time before the new rate becomes effective may suspend the operation of the rate. However, the suspension shall not be for a longer period than nine (9) months beyond the time when the rate would otherwise go into effect. Any order initially suspending the rate shall set a specific date for the commencement of a hearing inquiring into the rate requested unless waived by the applicant utility.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 121.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-624. Interim implementation of suspended rates.

(a) If the public utility contends that an immediate and impelling necessity exists for the requested rate increase, a petition may be filed with the Arkansas Department of Transportation narrating the alleged circumstances and requesting a hearing on the petition.

(b) The hearing must commence within thirty (30) days from the date of the filing of the petition or at such subsequent time as may be mutually agreeable to the department and the utility.

(c) If the department finds at the hearing that there is substantial merit to the allegations of the utility's claims, the department may permit all or a portion of the rate to become effective if there is filed with the department a bond to be approved by it, payable to the State of Arkansas in such amount and with such sufficient security to insure the prompt payment of any damages or refunds, with interest, to the

persons entitled thereto if the rate so put into effect is finally determined to be excessive or if there is substituted for the bond other arrangements satisfactory to the department for the protection of the parties interested.

(d) The findings of the department relative to the petition of the utility for the immediate and impelling necessity for relief shall be issued on or before the sixtieth day following the date of filing of the petition.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 1; 1985, No. 523, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 122.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-625. Rate increase not effective until final order.

Unless the Arkansas Department of Transportation finds an immediate and impelling necessity exists or if the department fails to enter a timely order as provided in § 23-4-624, no public utility shall place any rate increase into effect until a final decision and order is made by the department.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 1; 1985, No. 523, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 123.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-626. Authority of department to fix rates — Apportionment of increase.

(a) If, after the investigation and hearing thereon, the Arkansas Department of Transportation finds the new rate to be unjust, unreasonable, discriminatory, or otherwise in violation of the law or rules of the department, it shall determine and fix the just and reasonable rate to be charged or applied by the utility for the service in question, from and after the time the new rate took effect.

(b) Until rate schedules in compliance with the department's order can be filed and approved, any rate increase allowed in the department's order shall be apportioned among all classes of customers and shall become effective on all bills rendered thereafter through a temporary surcharge or other equitable means, as shall be prescribed in the order.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1;

1981 (1st Ex. Sess.), No. 30, § 2; 1983, No. 911, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 124.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-627. Failure of department to reach timely decision — Conditional implementation of suspended rates.

In the event no final rate determination has been made upon the schedule for new rates within ten (10) months after the date the schedule for new rates was filed with the Arkansas Department of Transportation, the public utility may put the suspended rate into effect for all bills rendered thereafter immediately upon the filing of a bond to be approved by the department payable to the State of Arkansas in such amount and with sufficient security to insure prompt payment of any refunds to the persons entitled thereto, including an interest rate as determined by the department not to exceed the maximum interest otherwise allowed by law, if the rate or rates so put into effect are finally determined to be excessive. There may be substituted for the bond other arrangements satisfactory to the department for the protection of the parties interested.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 1; 1983, No. 911, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 125.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-629. Surcharge to collect rates increased by courts.

(a) In the event that the rates set in the order of the Arkansas Department of Transportation subsequently are determined to have been inadequate, either on rehearing or in accordance with court decision on judicial review, the public utility subject to the order shall be entitled to impose a surcharge on the affected customers for collection of the increased rates that otherwise would have been collected during the period between the effective date of the initial order and the effective date of the rates as increased, together with interest as determined by the department at a rate not to exceed the maximum interest rate otherwise allowed by law.

(b) This surcharge shall be assessed over a period equal to the period between the date of the initial order and the effective date of the rates, as increased.

(c) The surcharge shall be distributed among the affected customers in proportion to the amounts those customers were charged during the period between the date of the initial order and the effective date of the rates, as increased.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 2; 1983, No. 911, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 126.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-630. Refunds of excessive rate collections under bond.

In the event a public utility shall have implemented under bond or other arrangements as a matter involving an immediate and impelling necessity under § 23-4-624 an amount which exceeds that allowed by the Arkansas Department of Transportation in its final order, the department shall order the immediate refund of the excessive bonded collections.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 2; 1983, No. 911, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 127.

Amendments. The 2017 amendment substituted "under" for "pursuant to", and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-631. Refunds of excessive bonded collections — Order not stayed during rehearing.

An application for rehearing under § 23-2-422 filed by a party aggrieved by the final order of the Arkansas Department of Transportation shall not stay the effectiveness of the order as it pertains to refunds of excessive bonded collections.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 2; 1983, No. 911, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 128.

Amendments. The 2017 amendment substituted "under" for "pursuant to", and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-632. Surcharge to collect excessive refunds.

In the event that the amount of refunds ordered by the Arkansas Department of Transportation in its final order is subsequently determined to have been excessive, either on rehearing or in accordance with a court decision on judicial review, the public utility subject to the order shall be entitled to impose an additional surcharge on the affected customers to recover that portion of the refunds to which it was entitled, together with interest as determined by the department at a rate not to exceed the maximum interest rate otherwise allowed by law. The surcharge shall be assessed over a period equal to the period between the date the rates were implemented under bond and the date of the department's final order. The surcharge shall be distributed

among the affected customers in proportion to the amount of refunds those customers received.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; 1981 (1st Ex. Sess.), No. 30, § 2; 1983, No. 911, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 129.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-633. Petition for mandamus.

If the Arkansas Department of Transportation order is not issued before the expiration of the period of suspension, the filed rates shall remain subject to refund as provided in § 23-4-630, but the applicant utility shall have the right to petition the Pulaski County Circuit Court for a writ of mandamus compelling the issuance of an order by the department within fifteen (15) days of the writ of mandamus issued by the Pulaski County Circuit Court. The petition shall be advanced on the docket above all other pending civil cases, and a hearing thereon shall be held within seven (7) days of the filing of the petition. The scope of review shall be limited to the issue of the failure of the department to act within the time limits provided for in this act.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 130.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-634. Suit to compel refunds — Proceeds.

(a) If the public utility fails to make refunds within thirty (30) days after the effective date of the order requiring such refunds, the Arkansas Department of Transportation shall bring suit in the name of the State of Arkansas, for the use and benefits of all those entitled to a refund, in any court of competent jurisdiction and recover the amount of all refunds due together with interest thereon at a rate not to exceed the maximum rate otherwise allowed by law and all court costs.

(b) No suit to recover the refunds shall be maintained unless instituted within two (2) years after the final determination.

(c) The amount recovered shall be paid to the clerk of the court where the suit was pending. It shall be the clerk's duty to distribute the amount recovered to the persons entitled thereto as directed by the order of judgment of the court.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; 1980 (2nd Ex. Sess.), No. 4, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1; 2017, No. 707, § 131.

Amendments. The 2017 amendment substituted "Department of Transporta-

tion" for "State Highway and Transportation Department" in (a).

23-4-635. Changes in rates by common carriers.

(a) No change shall be made in the rates, fares, and charges or joint rates, fares, and charges that have been filed with the Arkansas Department of Transportation and published by any common carrier in compliance with the requirements of § 23-4-110 except after thirty (30) days' notice to the department and to the public.

(b) The notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect.

(c) The proposed changes shall be shown by printing a new schedule or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.

(d) The department, in its discretion and for good cause shown, may allow changes upon less notice than specified in this section or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(e) The department is authorized to make suitable rules and regulations for the simplification of schedules of rates, fares, charges, and classifications and to permit, in the rules and regulations, the filing of an amendment of or change in any rate, fare, charge, or classification without filing a complete schedule covering rates, fares, charges, or classifications not changed, if, in its judgment, it is not inconsistent with the public interest.

History. Acts 1937, No. 133, § 1; Pope's Dig., § 2128; A.S.A. 1947, § 73-118; Acts 2017, No. 707, § 132.

Amendments. The 2017 amendment, in (a), substituted "that" for "which" and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-637. Discriminatory interterritorial freight rates.

(a) The Arkansas Department of Transportation is vested with authority to formulate and adopt plans for a complete and thorough study of and attack on interterritorial freight rates adversely affecting Arkansas. However, the plans shall be subject to approval by the Governor.

(b) The department is authorized to enter into contracts with rate experts, accountants, counsel, and others, taking into consideration the integrity, honesty, experience, training, and general fitness of those selected.

(c) The department is authorized and directed, on behalf of the State of Arkansas and with approval by the Governor, to enter into agreements with other states, or associations of states or of governors or other authorized representatives of states, to institute, prosecute, or intervene in proceedings before the Interstate Commerce Commission

[abolished] to remove freight rate discriminations against Arkansas and the southern and southwestern territories.

History. Acts 1939, No. 107, §§ 1-3; 2017, No. 707, § 133.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

Subchapter 7 — Railroads and Express Companies — Establishing Rates

23-4-703. Acts 1899, No. 53, not applicable to interstate traffic.

The provisions of this act shall not be construed as to require the Arkansas Department of Transportation to investigate or call upon any railroad or express company for its schedule or tariff of charges in the transportation of passengers or property from any point wholly outside of this state or to in any way interfere with such rates or charges.

History. Acts 1899, No. 53, § 20, p. 82; C. & M. Dig., § 1629; Pope's Dig., § 1951; A.S.A. 1947, § 73-1520; Acts 2017, No. 707, § 134.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-706. Penalties — Actions to recover.

(a) If any person or corporation operating a railroad or express company in this state, or any receiver, trustee, or lessee of any such person or corporation, violates any of the provisions of this act or aids or abets, or violates the tariff of charges as fixed by the Arkansas Department of Transportation or any of the rules regarding railroads or express companies as made by the department and for which there is no other penalty prescribed in this act, then the person or corporation, receiver, trustee, or lessee shall be liable to a penalty of not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000) for each violation of this act or such tariff of charges or rules and regulations.

(b)(1) The penalty may be recovered by an action to be brought in the name of the State of Arkansas in the county in which the violation may occur.

(2)(A) The department shall institute the action, and actions for the recovery of the penalties prescribed in this act, through the prosecuting attorney of the proper district.

(B) The prosecuting attorney shall be allowed a fee by the court not to exceed twenty-five percent (25%) of the amount collected.

(C) If any prosecuting attorney shall neglect for fifteen (15) days after notice to bring suit, the department may employ some other attorney at law to bring the suit who shall be allowed a fee therefor to be fixed by the court but not to exceed twenty-five percent (25%) of the amount collected. In such a case, the prosecuting attorney shall not interfere.

(3) No such suit shall be dismissed or compromised without the consent of the court and of the department.

(c) In all trials of cases brought for a violation of any tariff charges by the department, it may be shown in defense that the tariff so fixed was unjust. Nothing in this section shall be so construed as to in any manner interfere with the action for damages as provided in § 23-4-705.

History. Acts 1899, No. 53, § 18, p. 82; A.S.A. 1947, §§ 73-1414, 73-1414n; Acts 2017, No. 707, § 135.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-708. Rate sheets and tariff charges furnished department by railroads.

(a) Every person or corporation operating any railroad or express business in this state is required to furnish the Arkansas Department of Transportation, within fifteen (15) days after notice to do so, with the rate sheet and tariff charges for transportation of every kind over the railroad.

(b) The department shall fix rates and tariffs of charges accordingly for those express companies and railroads, the officers of which fail to furnish rate sheets or tariffs of charges as required in subsection (a) of this section.

History. Acts 1899, No. 53, § 9, p. 82; C. & M. Dig., § 1627; Pope's Dig., § 1949; A.S.A. 1947, § 73-1513; Acts 2017, No. 707, § 136.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-4-709. Ratemaking procedure.

(a) It shall be the duty of the Arkansas Department of Transportation to:

(1) Examine and revise the rate sheet and tariff charges for freight or express matter for each railroad in this state;

(2) Determine whether or not, and in what manner, if any, the charges and rates are more than just and reasonable compensation for the services rendered; and

(3) Determine whether or not and in what manner, if any, such charges and rates are in violation of any of the provisions of this act.

(b) The department:

(1) Will make reasonable and just rates of freight, express, and passenger tariffs to be observed by all persons and corporations operating any railroad or engaged in transporting persons or property as express or freight in this state;

(2) Shall make rules as to charges at any and all points for the necessary hauling and delivering of express and freight; and

(3) Will regulate rates and charges for such services on all railroads as, in their judgment, justice to the public and the person or corporation requires and by rule make the rates and charges conform to the requirements of this act.

(c) The department, in making such rules and regulations, shall first give the person or corporation to be affected notice to appear and show cause, if it can, why no change should be made in the rates then in force and shall take into consideration the character and nature of the service to be performed, the entire earnings of any railroad or express company, the expense of operating the railroad or express company, and the income and value thereof.

(d) When any tariff of charges is corrected and approved, the department shall append a certificate of its approval to the tariff of charges and give notice thereof to any officer or agent of the railroad or express company to be affected thereby. The tariff of charges shall be kept posted for at least five (5) days before the tariff and charges shall go into effect.

(e) The department shall not alter or change any tariff of charges so approved by it except upon ten (10) days' notice in writing to the person or corporation operating the express company or railroad to be affected by the change, giving the person or corporation an opportunity to be heard. The notice is to be given by delivering a copy thereof to any officer or agent of the person or corporation.

History. Acts 1899, No. 53, § 9, p. 82; C. & M. Dig., § 1627; Pope's Dig., § 1949; A.S.A. 1947, § 73-1513; Acts 2017, No. 707, § 137; 2019, No. 315, § 2396.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language of (a).

The 2019 amendment deleted "and regulations" following "rules" in (b)(2); and substituted "rule" for "regulation" in (b)(3).

23-4-714. Complaints — Investigation.

It shall be the duty of the Arkansas Department of Transportation, upon the complaint of any person, company, or corporation in writing, charging any person or corporation with discrimination or overcharge, to investigate the complaint and take such action in the premises as is provided in this act and which the facts in the case justify.

History. Acts 1899, No. 53, § 23, p. 82; C. & M. Dig., §§ 1631, 1690; Pope's Dig., §§ 1953, 1994; A.S.A. 1947, § 73-1522; Acts 2017, No. 707, § 138.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-715. Complaints — Hearings.

It shall be the duty of the Arkansas Department of Transportation to hear all complaints made by any person, firm, or corporation against any such tariff of charges so approved, to hear the parties to the controversy in person or by attorney, or both. The department may take testimony, orally or in writing, and regulate argument thereon and conduct the investigation of such complaints in such manner as to the department may seem best adapted to arrive at the truth. When any changes are made in any tariff of charges, notice thereof shall be given to the person or corporation to be affected thereby.

History. Acts 1899, No. 53, § 15, p. 82; C. & M. Dig., § 1689; Pope's Dig., § 1993; A.S.A. 1947, § 73-1518; Acts 2017, No. 707, § 139.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-716. Liability as to rates approved by department.

In no instance shall any person or corporation operating a railroad or express company, the schedule of charges of which have been submitted to, revised, and approved by the Arkansas Department of Transportation, be civilly or criminally liable for the making of any charge that has been authorized by the tariff of charges approved by the department or the rules and regulations prescribed by the department.

History. Acts 1899, No. 53, § 15, p. 82; C. & M. Dig., § 1689; Pope's Dig., § 1993; A.S.A. 1947, § 73-1518; Acts 2017, No. 707, § 140.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" and substituted "that" for "which".

23-4-717. Railroads required to furnish copies of traffic agreements and other information to department.

Upon notice to do so, every person or corporation operating a railroad or express company having an agent or office in the state shall furnish the Arkansas Department of Transportation with all the information required to enable the department to perform its duties relative to the management of their respective lines and connecting lines and, particularly, with copies of all leases, contracts, and agreements with other lines, express companies, or sleeping car companies and shall furnish all such information as to the number of persons employed in the different departments of their service and the wages paid these employees, as the department may require.

History. Acts 1899, No. 53, § 16, p. 82; C. & M. Dig., § 1628; Pope's Dig., § 1950; A.S.A. 1947, § 73-1519; Acts 2017, No. 707, § 141.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-4-718. Access to railroad books by department — Penalties.

(a)(1) The Arkansas Department of Transportation shall have the right at such times as the department deems necessary to inspect the books and papers of any railroad company and to examine under oath any officer, agent, or employee of the railroad in relation to the business and affairs of the railroad.

(2) If any railroad refuses to permit the department to examine its books and papers, the railroad company, for each offense, shall pay to the State of Arkansas not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each day it shall so fail and refuse.

(b) Any officer, agent, or employee of any railroad company who, upon proper demand, shall fail or refuse to exhibit to the department any book or paper of such a railroad company which is in the possession or under the control of the officer, agent, or employee shall be deemed guilty of a misdemeanor and upon conviction in any court having jurisdiction shall be fined for each offense a sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

History. Acts 1899, No. 53, §§ 25, 26, p. 82; C. & M. Dig., §§ 1625, 1626; Pope's Dig., §§ 1947, 1948; A.S.A. 1947, §§ 73-1524, 73-1525; Acts 2017, No. 707, § 142.

Amendments. The 2017 amendment, in (a)(1), substituted "Department of Transportation" for "State Highway and Transportation Department" and substituted "the department deems" for "they may deem".

23-4-719. Enforcement of Acts 1899, No. 53 — Mandamus.

If any person or corporation operating any railroad or express company fails, refuses, or neglects, after notice by the Arkansas Department of Transportation, to put up its rate sheet, giving its tariff of charges in the manner, place, and time as provided in this act; to furnish the department with the rate sheet and tariff of charges as provided for in this act; to furnish cars and motive power for the prompt transportation of freight as provided in this act; to comply with any provision of this act; or to make returns as required by this act, then the person or corporation shall be subject to a writ of mandamus. The writ shall be issued by any circuit court of this state where the person or corporation has an office, agent, or place of business to compel a compliance with the provisions and requirements of this act. The writ shall issue in the name of the State of Arkansas at the relation of the department appointed under the provisions of this act, and failure to comply with the requirements shall be punishable as and for a contempt.

History. Acts 1899, No. 53, § 22, p. 82; C. & M. Dig., § 1694; Pope's Dig., § 1997; A.S.A. 1947, § 73-1521; Acts 2017, No. 707, § 143.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

Subchapter 8 — Railroads and Transportation Companies — Passes and Free Transportation

SECTION.
23-4-805. Exemptions — Certain officials permitted to accept and use passes.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-4-805. Exemptions — Certain officials permitted to accept and use passes.

(a) Sheriffs are exempt from the provision of § 23-4-803 [repealed], and it shall not be unlawful for railroad companies to furnish free passes to them.

(b) The Commissioner of Elementary and Secondary Education and the Director of the Division of Career and Technical Education and the prosecuting attorneys and judges of the circuit courts of the several judicial districts of this state shall be permitted to accept and use a free pass on any railroad in this state without incurring any penalty prescribed under § 23-4-803 [repealed].

(c) Any county judge or any constable or deputy sheriff within the State of Arkansas is permitted to accept and use a free pass on any railroad in the State of Arkansas without incurring the penalty prescribed in § 23-4-803 [repealed].

(d) No railroad company issuing such a pass shall be liable for the penalty set out in § 23-4-802 or liable to prosecution under any of the laws of the State of Arkansas because of the issuance of the pass.

History. Acts 1895, No. 77, § 1, p. 102; 1903, No. 192, § 2, p. 376; 1917, No. 400, § 1, p. 1866; C. & M. Dig., § 893; Acts 1931, No. 151, § 1; 1935, No. 19, § 1; Pope's Dig., § 1096; A.S.A. 1947, § 73-1532; Acts 2019, No. 910, § 2347.

Amendments. The 2019 amendment substituted "Commissioner of Elementary and Secondary Education and the Director of the Division of Career and Technical Education" for "Commissioner of Education and the Director of the Department of Career Education" in (b).

Subchapter 9 — Rural Electric Distribution Cooperatives

23-4-902. Exemption from rate case procedures, etc.

A co-op, as defined in § 23-4-901, shall not be subject to rate case procedures and hearings and other requirements of §§ 23-4-402 — 23-4-405, 23-4-407 — 23-4-418, and 23-4-620 — 23-4-634 and Arkansas Public Service Commission rules implementary thereof, hereafter referred to as "rate case procedures", by the commission unless:

(1) By action of its board of directors, the co-op elects to be subject to rate case procedures by the commission;

(2) A proposed change in the co-op's rates and charges exceeds ten percent (10%) of total gross revenues;

(3) Ten percent (10%) of the co-op's member-consumers petition the commission to apply rate case procedures; or

(4) As otherwise provided in this subchapter.

History. Acts 1987, No. 821, § 2; 2019, No. 315, § 2397.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the introductory language.

Subchapter 10 — Pole Attachments

23-4-1003. Regulation by commission of rates, terms, and conditions.

(a) The Arkansas Public Service Commission shall regulate the rates, terms, and conditions upon which a public utility shall provide access for a pole attachment.

(b)(1) The commission shall develop rules necessary for the effective regulation of the rates, terms, and conditions upon which a public utility shall provide access for a pole attachment.

(2) In developing and implementing the rules under this subsection, the commission shall consider:

(A) The interests of the subscribers of the services offered through pole attachments;

(B) The interests of the consumers of the public utility services;

(C) Maintenance of reliability of public utility services; and

(D) Compliance with applicable safety standards.

(3) [Repealed.]

(c) Nothing in this section prevents a public utility, an electric utility, a telecommunications provider, a cable television service, or a cable internet access service from entering into a voluntarily negotiated,

written agreement regarding the rates, terms, and conditions upon which access for a pole attachment is provided.

History. Acts 2007, No. 740, § 1; 2017, No. 334, § 4.

Amendments. The 2017 amendment repealed (b)(3).

CHAPTER 10

TRANSPORTATION OF PASSENGERS AND FREIGHT GENERALLY

SUBCHAPTER.
3. Freight — Carriers Generally.
4. Freight — Railroads.

Subchapter 3 — Freight — Carriers Generally

SECTION.
23-10-301. Express and freight rules prescribed by department.
23-10-302. Express offices and delivery — Penalties.

23-10-301. Express and freight rules prescribed by department.

The Arkansas Department of Transportation shall make rules to be observed by all persons or corporations operating any railroad or engaged in transporting property as express or freight in this state, in respect to the receiving, hauling, transporting, storing, and delivering of freight and express as, in its judgment, the public convenience may require.

History. Acts 1907, No. 422, § 3, p. 1137; C. & M. Dig., § 1649; Pope's Dig., § 1970; A.S.A. 1947, § 73-1304; Acts 2017, No. 707, § 144; 2019, No. 315, § 2398.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment deleted "and regulations" following "rules".

23-10-302. Express offices and delivery — Penalties.

(a)(1) All corporations doing an express business in Arkansas are required to establish and maintain an office in all cities of the first class in Arkansas, for the purpose of receiving shipments to be made by express and to receive and deliver all packages carried or sent by express to the cities.

(2) The express offices shall be open for business in the cities at all reasonable times and hours.

(b) The Arkansas Department of Transportation is authorized and directed to define the limits in the cities in which express companies shall make free delivery of all express packages received by them.

(c)(1) Any express company refusing to establish and maintain the offices or refusing to deliver free any express packages received by them within the limits fixed by the department shall be guilty of a misde-

meanor for each failure or refusal to comply with the terms of this section or the orders of the department and shall be fined in any sum not exceeding one hundred dollars ($100) for each offense.

(2) Each day that the company refuses to establish and maintain the offices and each refusal to deliver within the territory fixed by the department shall be a separate offense.

History. Acts 1911, No. 356, §§ 1-3; C. & M. Dig., §§ 854-856, 938-940; Pope's Dig., §§ 1058-1060, 1142-1144; A.S.A. 1947, §§ 73-1301 — 73-1303; Acts 2017, No. 707, § 145.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (b).

Subchapter 4 — Freight — Railroads

23-10-406. Penalties for violations of §§ 23-10-402, 23-10-403, 23-10-405, and 23-10-409 — 23-10-431, or rules of department — Actions to recover.

(a) If any person or corporation operating a railroad in this state for the transportation of freight, or any receiver, trustee, or lessee of any such person or corporation, or any other person or corporation as defined in § 23-10-402 or its employees or agents violate any of the provisions of §§ 23-10-402, 23-10-403, 23-10-405, and 23-10-409 — 23-10-431, or aid or abet therein, or violate the tariff of charges or the rules of the Arkansas Department of Transportation as fixed by the department regarding railroad companies upon furnishing cars upon application of shippers, and regarding transportation, delivery, and storage of freight, forbidden pooling, discrimination, rebate, drawback, or other similar device, either directly or indirectly, or regarding any of the rules made by the department based upon §§ 23-10-402, 23-10-403, 23-10-405, and 23-10-409 — 23-10-431, and for which there is no other penalty prescribed in §§ 23-10-402, 23-10-403, 23-10-405, and 23-10-409 — 23-10-431, then the person, corporation, receiver, trustee, lessee, or any other person or corporation as defined in § 23-10-402 shall be liable to a penalty of not less than five hundred dollars ($500) nor more

than three thousand dollars ($3,000) for each violation of §§ 23-10-402, 23-10-403, 23-10-405, and 23-10-409 — 23-10-431, or of such rules of the department based upon §§ 23-10-402, 23-10-403, 23-10-405, and 23-10-409 — 23-10-431.

(b)(1) The penalty may be recovered by an action to be brought in the name of the State of Arkansas in the county in which the violation may occur.

(2)(A) The department shall institute an action for the recovery of the penalties prescribed in §§ 23-10-402, 23-10-403, 23-10-405, and 23-10-409 — 23-10-431 through the prosecuting attorney of the proper district.

(B) The prosecuting attorney shall be allowed a fee by the court not to exceed twenty-five percent (25%) of the amount collected.

(C) If any prosecuting attorney neglects for fifteen (15) days after notice to bring suit, the department shall employ some other competent attorney at law to bring the suit who shall be allowed a fee to be fixed by the court not to exceed twenty-five percent (25%) of the amount collected. In such a case, the prosecuting attorney shall not interfere.

(3) No such suits shall be dismissed or compromised without the consent of the court and the department.

(c) Nothing in this section shall be so construed as to interfere in any manner with the action for damages as provided in § 23-10-431.

History. Acts 1907, No. 193, § 22, p. 453; C. & M. Dig., § 914; Pope's Dig., § 1118; A.S.A. 1947, § 73-1329; Acts 2017, No. 707, § 146; 2019, No. 315, § 2399.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "and regulations" following "rules" near the end of (a).

23-10-407. Reasonable rules for transportation of freight permitted.

(a) It shall be lawful for railroads to prescribe rules for the transportation of merchandise, livestock, and other freight that are reasonable and not inconsistent with the common law or statutory duties and liabilities of railroads as common carriers.

(b) The reasonableness or unreasonableness of the rules shall be determined by a jury in all cases where the rules become an issue before any court.

History. Acts 1907, No. 239, § 3, p. 557; C. & M. Dig., § 845; Pope's Dig., § 1049; A.S.A. 1947, § 73-1358; Acts 2019, No. 315, § 2400.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a) and (b); and deleted "or regulations" following "rules" in (b).

23-10-408. Contracts or rules abridging liability of railroad void.

(a) It shall be unlawful for any railroad or any of its agents or employees to enter into an agreement or contract with any shipper of any livestock, merchandise, or other freight for the purpose of abridging, modifying, limiting, or abrogating the statutory and common law duties and liabilities of the railroad as a common carrier. All agreements and contracts made for that purpose are declared to be void and shall not be enforced by any of the courts of this state.

(b) All rules prescribed by any railroad for the transportation of any merchandise, livestock, or other freight which are inconsistent with the common law and statutory duties and liabilities of railroads as common carriers or that in anywise limit or abridge the statutory and common laws and rights of any shipper are declared to be void and shall not be enforced by any of the courts of this state.

History. Acts 1907, No. 239, §§ 1, 2, p. 557; C. & M. Dig., §§ 843, 844; Pope's Dig., §§ 1047, 1048; A.S.A. 1947, §§ 73-1356, 73-1357; Acts 2019, No. 315, § 2401.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

23-10-415. Duty to exchange and return cars.

(a)(1) It shall be the duty of every railroad company in this state to exchange loaded and empty cars in the transportation of freight, for the purpose of facilitating freight movement, with every other railroad with which the railroad connects forming any part of the route for the shipment of the freight or with which it has or participates in joint rates for such shipments.

(2) It shall be the duty of each of the railroad companies forming the route or having or participating in the joint rates, upon demand by the connecting line, to furnish to the connecting line within reasonable time after the loaded cars are delivered as many empty cars suitable for carrying the freight as may be delivered to it loaded by the connecting carrier for the purpose of transportation over its line or for delivery to any point on its line.

(b) Upon demand of the owner thereof, it shall be the duty of every railroad company receiving the cars of another railroad company to return the cars within a reasonable time after demand therefor and within the time and according to the rules prescribed by the Arkansas Department of Transportation.

History. Acts 1907, No. 193, § 1, p. 453; C. & M. Dig., § 895; Pope's Dig., § 1099; A.S.A. 1947, § 73-1310; Acts 2017, No. 707, § 147; 2019, No. 315, § 2402.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (b).

The 2019 amendment deleted "and regulations" following "rules" in (b).

23-10-432. Duty to furnish cars — Reasonable time for requesting cars.

It shall be deemed, prima facie, a reasonable time within which to order cars that any shipper shall give notice thereof to the station agent at the place of shipment, or in his or her absence to the nearest station agent of the railroad company to which the application is made, three (3) days before a shipment of five (5) cars or fewer, and five (5) days for fewer than ten (10) but more than five (5) cars, and eight (8) days for ten (10) cars or more. It shall be the duty of the railroad companies to furnish their station agents with printed blanks upon which shippers may make application for their cars. However, nothing in this section and §§ 23-10-401, 23-10-433 — 23-10-437, and 23-12-605 shall be construed to exempt any railroad company from the obligation to furnish cars for shipment without the written notice, but it shall only be subject to the penalties of §§ 23-10-434 — 23-10-437 for failure to furnish cars to shippers where notice thereof shall be given in writing or, in case of shipment of freight wholly between points in this state, then in accordance with the rules of the Arkansas Department of Transportation.

History. Acts 1909, No. 277, § 4, p. 814; C. & M. Dig., § 1637; Pope's Dig., § 1958; A.S.A. 1947, § 73-1308; Acts 2017, No. 707, § 148; 2019, No. 315, § 2403.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" at the end of the last sentence.

The 2019 amendment deleted "and regulations" following "rules" in the last sentence.

23-10-434. Liability for failure to furnish or exchange cars — Exceptions.

(a) Every railroad company that, in violation of any of the provisions of this section and §§ 23-10-401, 23-10-432, 23-10-433, 23-10-435 — 23-10-437, and 23-12-605, fails to furnish any cars for the shipment of any freight within a reasonable time or, in case of the shipment of freight between points within this state, within the time prescribed by the Arkansas Department of Transportation if the department shall prescribe the time by rules as provided in this section and §§ 23-10-401, 23-10-432, 23-10-433, 23-10-435 — 23-10-437, and 23-12-605, and the company fails to do so within a reasonable time, or fails to receive and forward any loaded cars or to exchange cars as provided for in this section and §§ 23-10-401, 23-10-432, 23-10-433, 23-10-435 — 23-10-437, and 23-12-605, that company shall be liable to the shipper or other person injured or damaged thereby for all such injury and damages as may result to the shipper. The railroad company is also liable for all special damages of which it had notice at the time of the shipment or which occurs after written notice thereof, and shall be liable, in addition thereto, for an amount equal to a reasonable attorney's fee, in case suit is brought for recovery of such damages.

(b) In case of the failure or refusal to so furnish, within a reasonable time, any cars for the shipment of livestock, green fruit, vegetables, or other perishable freight, the railroad company shall be liable to the shipper for the damage caused thereby and a reasonable attorney's fee in case suit is brought to recover the damages.

(c) Every railroad company that fails to furnish cars or to exchange cars as required by the provisions of this section and §§ 23-10-401, 23-10-432, 23-10-433, 23-10-435 — 23-10-437, and 23-12-605 or by the rules of the department as provided in this section and §§ 23-10-401, 23-10-432, 23-10-433, 23-10-435 — 23-10-437, and 23-12-605 shall be liable to the railroad company injured thereby for all such damages as may result to it and, in addition thereto, an amount equal to a reasonable attorney's fee in case of suit brought for the recovery of any damages.

History. Acts 1909, No. 277, § 2, p. 814; C. & M. Dig., § 1635; Pope's Dig., § 1956; A.S.A. 1947, § 73-1306; Acts 2017, No. 707, § 149; 2019, No. 315, §§ 2404, 2405.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "and regulations" following "rules" in the first sentence of (a) and in (c).

23-10-435. Liability for cars of another railroad.

(a) Every railroad company using cars of another railroad company, or cars which have been delivered to it by the other railroad company, shall be liable to the party entitled thereto to pay for the reasonable use and hire thereof and for injury or damages to or destruction of the cars, while in its possession or under its control, for the amount of such injury. In the case of cars in the shipment of freight between points wholly within this state, the amount for the use or hire of the cars may be prescribed by the Arkansas Department of Transportation, except where the owners of the cars and the railway companies agree upon the compensation, in which case the amount so fixed shall govern.

(b) When any railroad company or owner of any car is dissatisfied with the amount fixed by the department for the use, hire, loss, or destruction of, or damage to, the cars, or when the railroad company which is liable therefor fails to pay for the use, hire, loss, or destruction of the cars, the department or person entitled thereto, or which is liable for the use, hire, loss, injury, or destruction of the cars, shall be entitled to establish the reasonable value thereof in a suit brought in any court of this state having jurisdiction of the parties and of the amount in controversy, and the court shall render such judgment as to it shall deem just and reasonable.

History. Acts 1909, No. 277, § 2, p. 814; C. & M. Dig., § 1635; Pope's Dig., § 1956; A.S.A. 1947, § 73-1306; Acts 2017, No. 707, § 150.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-10-436. Penalty for gross negligence in not furnishing or exchanging cars — Fee of prosecuting attorney.

(a)(1) Every railroad company which willfully, by its own gross negligence or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fails or refuses to furnish or exchange cars as provided for in this section and §§ 23-10-401, 23-10-432 — 23-10-435, 23-10-437, and 23-12-605 or to transport or deliver the cars within the time prescribed by the Arkansas Department of Transportation as to freight carried between points wholly within this state, or if not so prescribed, then within a reasonable time, shall, in addition to other liabilities provided for in this section and §§ 23-10-401, 23-10-432 — 23-10-435, 23-10-437, and 23-12-605 forfeit to the State of Arkansas, for each of the violations, not less than one dollar ($1.00) nor more than one hundred dollars ($100).

(2) Each day of failure or neglect as to each car which the railroad company by willful or gross negligence fails or refuses to furnish or exchange shall be treated as a separate offense.

(b)(1) Penalties are to be recovered in an action instituted by the department through the prosecuting attorney of the proper district.

(2) No such suit shall be dismissed or compromised without the consent of the court and the department.

(3)(A) The prosecuting attorney shall be allowed a fee by the court not to exceed twenty-five percent (25%) of the amount collected.

(B) If any prosecuting attorney neglects for fifteen (15) days after notice to bring suit, the department may employ some other attorney at law to bring the suit, who shall be allowed a fee therefor to be fixed by the court, not to exceed twenty-five percent (25%) of the amount collected, and in such case the prosecuting attorney shall not interfere.

History. Acts 1909, No. 277, § 3, p. 814; C. & M. Dig., § 1636; Pope's Dig., § 1957; A.S.A. 1947, § 73-1307; Acts 2017, No. 707, § 151.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

23-10-437. Intrastate freight — Rules.

(a) The Arkansas Department of Transportation is authorized and empowered, as to all freight carried wholly within this state and the cars used therefor:

(1) To make and establish all needful rules, general and special, which may be different according to the circumstances and conditions of different railroads and localities and for different kinds and classes of freight and cars, providing for the time, place, and manner of demanding cars for or giving notice of shipment of such freight and the time, place, and manner and the order in which the cars shall be furnished to shippers for the purpose of shipping freight between points in this state; and

(2) To prescribe rules for:

(A) The furnishing, exchanging, and interchanging of cars, loaded and empty, by railroad companies as between each other;

(B) The time, place, terms, and conditions upon which cars shall be furnished and interchange shall be made, and, in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury, or destruction of the cars of another railroad company in the transportation of freight;

(C) The time within which and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars or to have its cars returned, the reasonable free time to be allowed the shipper for the loading of cars without incurring liability for demurrage, and the free time which shall be allowed to the shipper or consignee in which to unload freight without incurring any liability for demurrage; and

(D) A schedule of reasonable demurrage charges, reciprocal or otherwise, for the use of cars, irrespective of damages or penalties provided in this subchapter, which may be different for different railroads and different traffic and localities to be paid by shippers for the detention or use of cars, either in loading or unloading or paid by the railroads for failing in a reasonable time to furnish cars or to make delivery of loaded cars, subject to the penalties and damages provided in §§ 23-10-432 — 23-10-436 and the rules with respect thereto.

(b) The department, whenever it may deem it necessary in order to secure the prompt transportation of freight and preservation of property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this state, including the time for transfer and delivery between connecting railroads.

(c) It shall be the duty of every such railroad to conform to all the rules and orders of the department made in accordance with this section. The failure of any such railroad company to observe the rules of the department, or to comply with the provisions of this section and §§ 23-10-401, 23-10-432 — 23-10-436, and 23-12-605 as to freight carried wholly within this state, shall be deemed an abuse subject to correction by the department and shall subject the railroad company to the penalties provided in §§ 23-10-432 — 23-10-436.

History. Acts 1909, No. 277, § 1, p. 814; C. & M. Dig., § 1650; Pope's Dig., § 1971; A.S.A. 1947, § 73-1305; Acts 2017, No. 707, § 152; 2019, No. 315, § 2406.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language of (a).

The 2019 amendment deleted "and regulations" following "Rules" in the section heading and made similar changes throughout the section.

CHAPTER 11

ESTABLISHMENT AND ORGANIZATION OF RAILROADS

SUBCHAPTER.

1. General Provisions.
2. Railroad Incorporation Act of 1959.
3. Sale, Lease, or Consolidation.
4. Foreign Railroads.

Subchapter 1 — General Provisions

23-11-101. Enforcement of laws or orders on complaint.

It is made the duty of the Arkansas Department of Transportation, on complaint, to enforce by necessary order any or all laws of this state pertaining to railroads and express companies.

History. Acts 1907, No. 422, § 6, p. 1137; C. & M. Dig., § 1693; Pope's Dig., § 1996; A.S.A. 1947, § 73-126; Acts 2017, No. 707, § 153.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-11-103. Railroads and express companies — Annual reports — Failure to report — Penalty.

(a) It is the duty of every person or corporation operating any railroad or express company in this state to make annual returns of the business of the railroad or express company to the Arkansas Department of Transportation.

(b)(1) The returns shall embrace all receipts and expenditures of the railroad or express companies in this state and are to be made according to forms furnished by the department for that purpose.

(2) The returns shall be made within thirty (30) days after the end of each year to which they relate.

(3) The returns shall be sworn to by some officer of the railroad or express company having knowledge of the matters therein stated.

(c)(1) Any person or corporation who fails or refuses to make the returns shall be liable to a penalty of fifty dollars ($50.00) for each day of such a failure or refusal.

(2) The penalty is to be recovered by action commenced in the name of the State of Arkansas in any court having jurisdiction of the amount, the action to be prosecuted as provided in this act.

History. Acts 1899, No. 53, § 17, p. 82; C. & M. Dig., § 1624; Pope's Dig., § 1946; A.S.A. 1947, § 73-138; Acts 2017, No. 707, § 154.

Amendments. The 2017 amendment, in (a), substituted "It is" for "It shall be" and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-11-104. Report of department as to information regarding railroad companies.

(a)(1) The Arkansas Department of Transportation shall ascertain as early as practicable the amount of money expended in the construction and equipment per mile of every railroad in Arkansas, the amount of money expended to procure the right-of-way, and the amount of money it would require to reconstruct the roadbed, track, and depots and to replace all the physical properties belonging to the railroad.

(2) The department shall also ascertain the amounts paid for salaries to the officers of the railroad, the wages paid to employees, and the operating expenses of each and every railroad in this state, including repairs and interest on indebtedness.

(b) When the information required by this section is obtained, it shall be communicated to the Attorney General by report. A duplicate of the report shall be filed with the Auditor of State for public use, and the information shall be printed, from time to time, in the annual report of the department.

History. Acts 1899, No. 53, § 27, p. 82; C. & M. Dig., § 1652; Pope's Dig., § 1973; A.S.A. 1947, § 73-139; Acts 2017, No. 707, § 155.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

Subchapter 2 — Railroad Incorporation Act of 1959

23-11-202. Definitions.

(a) For purposes of this subchapter, unless the context otherwise requires:

(1) "Department" means the Arkansas Department of Transportation or such other department as may be created or established for the purpose of regulation of common carriers in the State of Arkansas; and

(2) "Railroad corporation" shall be deemed to include all corporations having as an object or purpose the operation, upon rails or any similar device, of rolling stock, railroad cars, engines, locomotives, motor cars, and other equipment of all types designed or intended to be operated upon rails; where such operation involves the movement or transportation of persons, goods, or property belonging to or being transported to or from any other person, firm, or corporation, and a charge, tariff, or levy is exacted as payment, reimbursement, or compensation for the movement or transportation; and where the source of power or means of locomotion is transmitted through or provided by an engine, locomotive, or other mechanical or electrical device moving or operating or designed to move upon rails or similar devices.

(b) The provisions of this subchapter shall not apply to the transportation of passengers by rail in scenic or excursion type service. Any individual, corporation, limited liability company, partnership or association providing such a service shall be exempt from the jurisdiction of the department, provided that the operations are subject to the safety regulations and jurisdiction of the Federal Railroad Administration.

History. Acts 1959, No. 30, § 2; A.S.A. 1947, § 73-301.2; Acts 1997, No. 1187, § 8; 2017, No. 707, § 156.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

23-11-203. Articles of incorporation.

(a) The articles of incorporation of any contemplated railroad corporation shall contain all of the information prescribed for inclusion in the application to be filed with the Arkansas Department of Transportation by § 23-11-204. However, it shall not be necessary that the articles contain a statement of the manner in which the public convenience, necessity, and interest will be served by the granting of the charter, nor shall it be necessary that a preliminary survey of the proposed roadway or route be attached to the articles.

(b) The articles shall contain and set forth, subject to the limitations imposed by law or the Arkansas Constitution, those powers which it is desired by the incorporators that the contemplated corporation shall exercise. However, the statement of powers may be general in nature, and a general statement of powers in the articles shall not have the effect of prohibiting the corporation from exercising those powers specifically granted by the law of this state, unless so provided by the articles.

History. Acts 1959, No. 30, § 5; A.S.A. 1947, § 73-308.2; Acts 2017, No. 707, § 157.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-11-204. Formation of railroad corporation — Application — Contents.

Any number of persons, not fewer than three (3), being subscribers of the stock of any contemplated railroad corporation and desiring to form a railroad corporation under the laws of this state, may do so by first filing an application with the Arkansas Department of Transportation, setting forth the following information:

(1) The name of the proposed corporation. The corporate name must end with abbreviation "Inc." or must include the word "corporation" or "incorporation" or may include the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the abbreviation "&";

(2) The purpose of the corporation;

(3) The duration of the corporation, which may be perpetual or limited;

(4) The name of its resident agent, which resident agent may be either an individual or a corporation, and the address of the resident agent must be shown with particularity;

(5) If the corporation is to be authorized to issue:

(A) Only one (1) class of stock, the total number of shares of stock which the corporation shall have authority to issue, and:

(i) The par value of each of the shares; or

(ii) A statement that all the shares are to be without par value; or

(B) More than one (1) class of stock, the total number of shares of all classes which the corporation shall have authority to issue, and:

(i) The number of the shares of each class thereof that are to have a par value and the par value of each share of each such class;

(ii) The number of shares that are to be without par value; and

(iii) A statement of all or any of the designations and the powers, preferences, and rights, and the qualifications and limitations or restrictions thereof which are permitted by the provisions of the laws of this state governing the issuance of stock by private corporations in respect to any classes of stock of the corporation and the fixing of which by means of the articles of incorporation is desired and an express grant of such authority as it may then be desired to grant to the board of directors to fix, by resolutions, such powers, preferences, rights, qualifications, limitations, and restrictions that may be desired but which shall not be fixed by the articles;

(6) The amount of paid-in capital with which the corporation will begin business. The amount shall not be less than three hundred dollars ($300);

(7) The name and post office address of each of the incorporators and a statement of the number of shares subscribed by each, which number shall not be less than one (1), and the class of shares for which each has subscribed;

(8) A statement, verified under oath by three (3) of the incorporators, setting forth the manner in which the public convenience, necessity,

and interest will be served or promoted by the granting of a charter authorizing the establishment of the proposed corporation and construction or acquisition of the railroad, yards, shops, tracks, and other facilities proposed to be constructed or acquired by the corporation; and

(9) A preliminary survey of the proposed roadway or route of the line or tracks to be constructed or acquired by the corporation shall be attached to the application. The application shall set forth in detail the proposed location of all rights-of-way and other facilities of the corporation and the cities or other points through which, in which, or to which it proposes to establish its line or other facilities.

History. Acts 1959, No. 30, § 3; A.S.A. 1947, § 73-301.3; Acts 2017, No. 707, § 158.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language.

23-11-205. Application for incorporation — Hearing — Order of department.

(a) Promptly after the filing of an application for the organization of a railroad corporation, the Arkansas Department of Transportation, under and in accordance with rules and regulations to be established by the department, shall set a date for a hearing upon the application and shall provide that notice of the hearing shall be given to all persons whose interest may be adversely affected by the granting of the application.

(b) The department shall issue its order authorizing the granting of a charter to the proposed corporation if after the hearing the department finds that:

(1) A need exists for the formation of the railroad corporation;

(2) The public good and convenience will be served thereby; and

(3) The proposed financing of the corporation is adequate to permit and enable the corporation to provide all of the services and facilities proposed and to protect the public interest.

(c) A copy of the department's order, together with verified copies of the articles of incorporation, shall be filed in the office of the Secretary of State.

History. Acts 1959, No. 30, § 4; A.S.A. 1947, § 73-308.1; Acts 2017, No. 707, § 159.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-11-207. Filing of papers — Effect.

(a) Certified copies of the articles of incorporation together with copies of the charter issued by the Secretary of State and the order of the Arkansas Department of Transportation shall be filed in the office of the county clerk of each county through which the proposed line shall be situated or into which the proposed line shall extend.

(b) Upon the filing of the articles in the office of the county clerk as provided in subsection (a) of this section, the corporation shall be subject to all liabilities otherwise provided by the law of this state except as such powers may be limited by the articles of incorporation.

History. Acts 1959, No. 30, § 4; A.S.A. 1947, § 73-308.1; Acts 2017, No. 707, § 160.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-11-209. Specific powers and liabilities.

Every such corporation shall possess the general powers and be subject to the general liabilities and restrictions expressed in the special powers following, that is to say:

(1) To cause such examinations and surveys by their officers, agents, and servants for the proposed railroad to be made as may be necessary for the selection of the most advantageous route for the railroad and for this purpose to enter upon lands or waters of any person, but with their officers, agents, and servants subject to responsibilities for all damages which they shall do thereto;

(2) To receive, hold, and take such voluntary grants and donations of real estate and other property as shall be made to the company to aid in the construction, maintenance, and accommodation of the railroad. However, real estate thus received by voluntary grant shall be held, used, and disposed of by the company only according to the terms of the grants;

(3) To purchase and, by voluntary grants and donations, receive and take and, by its officers, engineers and surveyors, and agents, to enter upon and take possession of and hold and use all such lands and real estate and other property as may be necessary for the construction and maintenance of its railroad and the stations, depots, and other accommodations necessary to accomplish the object for which the corporation is created, but not until the compensation to be made therefor, as agreed upon by the parties or ascertained as hereinafter provided, is paid to the owners thereof, or deposited as hereinafter directed, unless the consent of the owner is given to enter into possession;

(4) To lay out its road, not exceeding six (6) rods wide, and to construct the road, and, for the purpose of cuttings, embankments, and procurements of stone and gravel, the corporation may take as much more land, within the limits of the charter and in the manner provided hereinafter, as may be necessary for the proper construction and security of the road;

(5) To construct their road upon or across any stream of water, watercourse, road, highway, railroad, or canal which the route of the road shall intersect, but the corporation shall not fill up, change, or permanently obstruct the channel of any navigable stream or other stream of water or watercourse but shall cross the stream or watercourse by bridge, trestle, or culvert and leave the stream or watercourse

open so that the water may at all times flow in the natural channel. When its bridge, trestle, or culvert is constructed, the corporation shall remove from the bed of the stream or watercourse any temporary obstruction placed therein by it which will interfere with the flow of the water and shall restore the stream or watercourse, road, or highway thus intersected to its former state, or as nearly as may be and so as not to have impaired its usefulness;

(6) To take, transport, carry, and convey persons and property and to receive tolls or compensation therefor;

(7) To erect and maintain all necessary and convenient buildings, stations, depots, yards, passing and switching facilities, fixtures, and machinery for the accommodation and use of their passengers, freight, and business and to take, obtain, and hold the lands necessary therefor;

(8) To regulate the time and manner in which passengers and property shall be transported and the tolls and compensation to be paid therefor, subject to the approval of the Arkansas Department of Transportation;

(9) To borrow money, at such rate of interest as the board of directors may determine, to be applied to the acquisition or construction of their railroad and all necessary and convenient buildings, stations, depots, yards, passing and switching facilities, and fixtures, to the purchase or other acquisition of equipment for use in connection with its business, engines, cars, and other rolling stock of every description, and to the refinancing of existing indebtedness and to no other purpose;

(10) To, at any time by means of subscription to the capital stock of any other railroad company or otherwise, aid the other company in the construction of its railroad, within or without the state, for the purpose of forming a connection to the other road, with the road owned by the company furnishing the aid. Any such railway company which may have built its road to the boundary line of the state may extend into the adjoining state and, for that purpose, may build or buy or lease a railroad in the adjoining state and operate the railroad and may own such real estate and other property in any adjoining state as may be convenient in operating the road, subject to approval by two-thirds (⅔) of its stockholders and the department under rules established by the department; and

(11) To make donations for the public welfare or for charitable, scientific, or educational purposes.

History. Acts 1868, No. 71, § 22, p. 290; 1893, No. 150, § 1, p. 263; C. & M. Dig., §§ 3976, 8450; Pope's Dig., §§ 4978, 11024; Acts 1959, No. 30, § 15; A.S.A. 1947, § 73-309; Acts 2017, No. 707, § 161; 2019, No. 315, § 2407.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (8).

The 2019 amendment deleted "and regulations" following "rules" in the second sentence of (10).

23-11-219. Subscription contracts for sale of stock.

Railroad corporations organized under the law of this state are authorized to enter into subscription contracts for the sale of their stock under such terms, conditions, and restrictions and subject to such liabilities relative thereto as are provided by law for such contracts by private corporations, except as such contracts may be restricted by the articles of incorporation or the Arkansas Department of Transportation.

History. Acts 1959, No. 30, § 11; A.S.A. 1947, § 73-324.2; Acts 2017, No. 707, § 162.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-11-220. Amendment of articles of incorporation.

(a) Amendments to the articles of incorporation of any railroad corporation incorporated under the law of this state shall be made only by the vote of a majority of the stockholders of the corporation.

(b)(1) No amendment shall be voted upon unless and until notice of an intention to present the amendment to a meeting of the stockholders shall have first been served upon all stockholders of the corporation by mailing the notice through the United States mail directed to the stockholders at the address of record on the stock records of the corporation at least thirty (30) days prior to the date set for the meeting.

(2) The notice shall contain full information as to the proposed amendment.

(3) Waiver of notice of the meeting by all of the stockholders of the corporation and filed with the secretary of the corporation shall be deemed to be compliance with the requirements of this section for notice of the proposed amendment to the stockholders.

(c)(1) No amendment of the articles of incorporation of a railroad corporation shall become effective unless and until the amendment has been first approved by the Arkansas Department of Transportation.

(2) The department shall establish rules governing the procedure for conducting hearings and making such determinations as it shall deem advisable for the purpose of approving amendments to the articles of incorporation and charter of railroad corporations incorporated in this state.

(d) A fee of five dollars ($5.00) shall be paid to the Secretary of State for filing each amendment.

(e) After the adoption of the amendment and the approval of the amendment by the department as provided by subsection (c) of this section, copies of the amendment, together with a certified copy of the order of the department approving the amendment, shall be filed in the office of the Secretary of State and in the office of the county clerk in each county in which the original articles are required to be filed by other provisions of this subchapter.

(f) It shall not be necessary to secure the approval of the department for a change of designation of resident agent of the corporation. Such a

change may be made at any time by the board of directors by duly adopted resolution and the filing of copies of the change with the department, the Secretary of State, and the county clerk in each county in which the articles of incorporation are required to be filed by the provisions of this subchapter.

History. Acts 1959, No. 30, §§ 7, 8; A.S.A. 1947, §§ 73-314.1, 73-314.2; Acts 2017, No. 707, § 163; 2019, No. 315, § 2408.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (c)(1).

The 2019 amendment deleted "and regulations" following "rules" in (c)(2).

23-11-221. Dissolution or liquidation of railroad corporation.

(a) Railroad corporations organized under the laws of this state may be dissolved or liquidated, wholly or in part, after approval of the action by the Arkansas Department of Transportation in the manner provided by the law for dissolution or liquidation of business corporations organized under the laws of this state.

(b) Certified copies of the order of the department approving the dissolution or liquidation shall be filed in the office of the Secretary of State and in the office of the county clerk in each county where the articles of incorporation are required to be filed.

History. Acts 1959, No. 30, § 12; A.S.A. 1947, § 73-315.1; Acts 2017, No. 707, § 164.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-11-222. Corporations existing prior to June 11, 1959 — Application of subchapter — Extension of existence.

(a) This subchapter shall be applicable to all railroad corporations organized under the laws of this state, provided that each existing railroad corporation may, within two (2) years of June 11, 1959, file with the Arkansas Department of Transportation, the Secretary of State, and the county clerk of each county in which its articles of incorporation are then filed an amendment to its articles of incorporation adopted by not less than two-thirds (⅔) of its stockholders, at an annual or special meeting, setting forth the period of existence desired for the corporation.

(b) When the filings are completed, the corporation's existence shall be deemed extended according to the terms of the amendment. However, if any such corporation fails to file the amendment, then its charter shall expire at the time it would have expired had this subchapter not been adopted unless it is extended prior to the expiration in the manner provided by law for extension of railroad corporation charters.

History. Acts 1959, No. 30, § 23; A.S.A. 1947, § 73-335; Acts 2017, No. 707, § 165.

Amendments. The 2017 amendment substituted "Department of Transporta-

tion" for "State Highway and Transportation Department" in (a).

23-11-223. Corporations existing prior to June 7, 1945 — Extension of charter.

(a) Upon the application of any railroad corporation chartered under the laws of this state prior to June 7, 1945, accompanied by a resolution of the board of directors of the railroad corporation, the Arkansas Department of Transportation is authorized to extend the charter of any such railroad corporation in accordance with the petition and the resolution of the board of directors of the railroad corporation, or on such terms as the department shall prescribe.

(b) If the petition is allowed, the department shall cause its approval to be endorsed upon the resolution presented with the petition, together with such restrictions as may be imposed by the department. The resolution shall be filed with the Secretary of State and certified in the same manner as prescribed by law with respect to the original articles of incorporation.

History. Acts 1935, No. 146, § 2; Pope's Dig., § 10992; Acts 1945, No. 181, § 3; A.S.A. 1947, § 73-315; Acts 2017, No. 707, § 166.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

Subchapter 3 — Sale, Lease, or Consolidation

SECTION.

23-11-302. Authority to sell or lease road or property to connecting foreign railroad — Authority to acquire other railroads — Ratification.

(a) Subject to the approval thereof by the Arkansas Department of Transportation under such rules for procedure as it may establish and a determination that such action will be in the public interest, any railroad corporation in this state may sell or lease its road, property, and franchise to any other railroad corporation duly organized and existing under the laws of any other state or territory whose line of railroad shall so connect with the leased or purchased road by bridge, ferry, or otherwise as to practically form a continuous line of railroad.

(b) Any railroad corporation in this state may buy or lease or otherwise acquire any railroad with all the property, rights, privileges, and franchises thereto pertaining, or buy the stock and bonds, or guarantee the bonds of any railroad corporation incorporated or organized within or without this state whenever the roads of the companies form in the operation thereof a continuous line or lines.

(c) Before any such lease or sale is valid, it must be approved and ratified by persons holding or representing two-thirds (⅔) of the capital

stock of each of the companies respectively, at a stockholders' meeting called for that purpose.

History. Acts 1889, No. 34, § 2, p. 43; C. & M. Dig., § 8508; Pope's Dig., § 11084; Acts 1959, No. 30, § 21; A.S.A. 1947, § 73-422; Acts 2017, No. 707, § 167; 2019, No. 315, § 2409.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "and regulations" following "rules" in (a).

Subchapter 4 — Foreign Railroads

SECTION.
23-11-402. Purchase or lease of state roads — Exception.

23-11-402. Purchase or lease of state roads — Exception.

Subject to approval thereof by the Arkansas Department of Transportation under such rules for procedure as it may establish and a determination that action will be in the public interest, any railroad corporation existing under the laws of any other state or territory may buy, lease, or otherwise acquire any railroad, the whole or part of which is in this state, with all the rights, privileges, and franchises thereto pertaining, or buy the stock and bonds, or guarantee the bonds of any railroad corporation incorporated or organized under the laws of this state whenever the roads of such companies shall form in the operation thereof a continuous line or lines. However, the road so purchased shall not be parallel or competing with the purchasing road.

History. Acts 1889, No. 34, § 2, p. 43; C. & M. Dig., § 8509; Pope's Dig., § 11085; Acts 1959, No. 30, § 22; A.S.A. 1947, § 73-423; Acts 2017, No. 707, § 168; 2019, No. 315, § 2410.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the first sentence.

The 2019 amendment deleted "and regulations" following "rules" in the first sentence.

CHAPTER 12

OPERATION AND MAINTENANCE OF RAILROADS

SUBCHAPTER.
1. General Provisions.
2. Roadbeds and Rights-of-Way.
3. Crossings and Switches.
5. Employees.
6. Train Service Generally.
10. Railroad Safety and Regulatory Act of 1993.

Subchapter 1 — General Provisions

23-12-101. Sections 23-12-101 — 23-12-103 cumulative.

The provisions of this section and §§ 23-12-102 and 23-12-103 shall be regarded as cumulative, and nothing therein shall be so construed as to repeal any other act now in force, nor to in any way curtail or limit the powers and duties of the Arkansas Department of Transportation.

History. Acts 1909, No. 163, § 2, p. 502; A.S.A. 1947, § 73-613n; Acts 2017, No. 707, § 169.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-12-102. Inspection of railroads by department.

The Arkansas Department of Transportation shall carefully examine the condition of the railroads of this state as often as the department considers necessary.

History. Acts 1909, No. 163, § 1, p. 502; C. & M. Dig., § 1633; Pope's Dig., § 1954; A.S.A. 1947, § 73-613; Acts 2017, No. 707, § 170.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" and substituted "the department considers" for "it deems it".

23-12-103. Unsafe tracks, bridges, etc. — Inspection — Notice to railroad of necessary repairs, etc. — Failure to repair or to stop traffic — Liability for injuries — Penalties.

(a)(1) It shall be the duty of the Arkansas Department of Transportation to inspect and examine the tracks, bridges, or other structures whenever it has reasonable grounds, either upon complaint or otherwise, to believe that any of the tracks, bridges, or other structures of any railroads in this state are in a condition that renders any of them dangerous or unfit for the transportation of passengers with reasonable safety.

(2) If, upon examination, in its opinion, any such tracks, bridges, or other structures or works are unfit for the transportation of passengers with reasonable safety, it shall be its duty to give to the superintendent or other executive officer of the company working or operating the defective tracks, bridges, or other structures notice of the condition thereof, and of the repairs necessary to place them in safe condition.

The department may also order and direct the speed of trains over such dangerous and defective tracks, bridges, or other structures until the repairs are made and the time within which the repairs shall be made by the company.

(b)(1) If any such superintendent or executive officer receiving the notice and order willfully neglects, for the period of two (2) days after receiving the notice and order, to direct the proper subordinate officers to move the passenger trains over the defective track, bridge, or other structure at the speed prescribed by the department, or if any engineer, conductor, or other employee of the company disobeys the order of the superintendent or officer whose duty it is to issue the order, then every such superintendent, conductor, engineer, or other employee shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding five hundred dollars ($500) or be imprisoned in the county jail of the proper county for a period not exceeding one (1) year, or both, at the discretion of the court.

(2) In case the disregard of the instructions of the department shall cause any accident whereby human life shall be lost or passengers maimed or wounded, the superintendent of the company, and the engineer and conductor in charge of the train, shall severally be deemed guilty of a felony and upon conviction shall be imprisoned in the penitentiary for a period of not fewer than two (2) nor more than ten (10) years.

(3) The department shall have power to wholly stop the running of passenger trains over the defective track, bridge, or other structure.

(c) The department is required, in case any company fails to repair the track, bridge, or other structure within the time required, to give notice of the fact to the traveling public in some newspaper having a general circulation along the line of the railroad.

(d) The department may recover from the railroad company the sum of one thousand dollars ($1,000) for each day that expires after the time fixed by the department for the repair of the defective track, bridge, or other structure for neglect to repair the same unless good and sufficient cause can be shown for the failure to repair the defective track, bridge, or other structure. Such sum may be recovered before any court having competent jurisdiction for the use and benefit of the State of Arkansas, after paying the costs of the advertisement herein provided for.

History. Acts 1909, No. 163, § 1, p. 502; C. & M. Dig., § 1633; Pope's Dig., § 1954; A.S.A. 1947, § 73-613; Acts 2017, No. 707, § 171.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" and made a stylistic change in (a)(1).

23-12-104. Number and frequency of trains and streetcars.

(a) If in the judgment of the Arkansas Department of Transportation any railroad corporation or street railroad corporation does not run trains enough or cars enough or possess or operate motive power

enough reasonably to accommodate the passenger and freight traffic transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at reasonable or proper time, having regard to safety, or does not run any train or car upon a reasonable time schedule for the run, then, after a hearing either on its own motion or after complaint, the department shall have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power, or to change the time for starting its trains or cars, or to change the time schedule for the run of any train or car, or make any other suitable order that the department may determine reasonably necessary to accommodate and transport the passenger or freight traffic transported or offered for transportation.

(b) No railroad corporation, street railroad corporation, or common carrier shall abandon, take up, or cease to operate for the transportation of passengers or freight any line, or any portion of its line, which it may deem no longer necessary for the successful operation of its road and for the convenience of the public without first obtaining the permission and approval of the department.

(c) Nothing in this section shall authorize the department to make any order with reference to the amount of cars or motive power or with reference to the schedule or with reference to the operation or nonoperation of that part of any street railroad within the limits of any municipality of this state. It is the intention of this act that the jurisdiction as to such matters shall be elsewhere under this act delegated to municipal councils and city commissions of this state.

History. Acts 1919, No. 571, § 10; C. & M. Dig., §§ 1632, 1651; Acts 1921, No. 124, § 7; Pope's Dig., §§ 1972, 2006; A.S.A. 1947, § 73-122; Acts 2017, No. 707, § 172.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

Subchapter 2 — Roadbeds and Rights-of-Way

SECTION.
23-12-203. Clearing right-of-way following derailment or wreck.

23-12-203. Clearing right-of-way following derailment or wreck.

(a) Any railroad operating in this state shall be required to clear its right-of-way of debris and wrecked equipment within ninety (90) days following any derailment or train wreck.

(b) In the event any railroad fails to comply with this requirement the Arkansas Department of Transportation, upon petition of any ten (10) citizens, shall conduct a hearing for the purpose of determining the cause of the railroad's failure to comply with this requirement.

(c) The department is authorized to file suit in a court of competent jurisdiction for an order requiring the railroad's compliance with this section.

History. Acts 1971, No. 225, § 1; A.S.A. 1947, § 73-633; Acts 2017, No. 707, § 173.
Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (b).

Subchapter 3 — Crossings and Switches

SECTION.

23-12-302. Railroad switch connections to be permitted.

Every railroad company shall permit switch connections for intrastate business to be made with its tracks at suitable and safe points by other carriers or shippers upon such terms and conditions as the Arkansas Department of Transportation may prescribe whenever, in the judgment of the department, it can be done with reasonable safety and whenever the business to be offered by the connecting company or shipper justifies it.

History. Acts 1919, No. 571, § 9; C. & M. Dig., § 1642; Pope's Dig., § 1963; A.S.A. 1947, § 73-120; Acts 2017, No. 707, § 174.
Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

Subchapter 5 — Employees

SECTION.

Effective Dates. Acts 2019, No. 467, § 2: Mar. 14, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that railroad employees and safe and effective railroad management are essential to the day-to-day railroad transit operations of the state; that the Railway Safety Improvement Act of 2008, Pub. L. No. 110-432 mandated Federal Railroad Administration Certification for railroad employees; that using the Federal Railroad Administration certification as the standard identification required for any accidents or incidents involving railroads eliminates misinterpretations and sets both a standard for identification and understanding between law enforcement officers and other safety officers with railroad employees and members of railroad management; and that this act will convey how highly the State of Arkansas values its transportation infrastructure. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

23-12-503. Liability for injury or death of employee generally.

Every common carrier by railroad in this state shall be liable for all damages to any person suffering injury while he or she is employed by the carrier or, in case of the death of the employee, to his or her personal or legal representative, for the benefit of the surviving widow or husband and children of the employee; if none, then to the employee's parents; if none, then to the next of kin of the employee, for the injury or death resulting in whole or in part:

(1) From the negligence of any of the officers, agents, or employees of the carrier;

(2) By reason of any insufficiency of clearance of obstructions; of strength of roadbed and tracks or structures, or machinery and equipment; of lights and signals in switching and terminal yards, or rules; and of number of employees to perform the particular duties with safety to themselves and their co-employees, or of any other insufficiency; or

(3) By reason of any defect, which defect is due to its negligence in its cars, engines, motors, appliances, machinery, tracks, roadbeds, boats, works, wharves, or other equipment.

History. Acts 1911, No. 88, § 1; C. & M. Dig., § 7138; Pope's Dig., § 9124; A.S.A. 1947, § 73-914; Acts 2019, No. 315, § 2411.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (2).

23-12-514. Standard employee identification requirements — Findings — Definitions.

(a) The General Assembly finds that:

(1) The services provided by railroads are essential to the functionality of the state;

(2) The legislature is obligated to provide standard identification requirements for railroad employees involved in a railroad accident or incident;

(3) The Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, mandated Federal Railroad Administration certification for railroad employees; and

(4) Providing standard identification requirements facilitates the investigation of railroad accidents or incidents for the investigating law enforcement officers or other safety officers.

(b) As used in this section:

(1) "Federal Railroad Administration-certified conductor" means a conductor, switchman, brakeman, trainman, or fireman licensed and certified by the Federal Railroad Administration;

(2) "Federal Railroad Administration-certified engineer" means an engineer licensed and certified by the Federal Railroad Administration;

(3) "Railroad accident or incident" means a collision or impact that:

(A) Occurs as a consequence of the flow of pedestrians, motor vehicles, or animals along the railroad system in the state; and

(B) Results in death, injury, or property damage; and

(4) "Railroad manager" means a railroad employee overseeing and assisting in the operation of railroad transit.

(c)(1) Except as provided in subdivision (c)(2) of this section, a railroad employee involved in a railroad accident or incident shall not be required to present his or her driver's license for identification purposes to a law enforcement officer or other safety officer investigating the railroad accident or incident.

(2) In lieu of a driver's license under subdivision (c)(1) of this section, Federal Railroad Administration certification may be presented to a law enforcement officer or other safety officer by a:

(A) Federal Railroad Administration-certified conductor;

(B) Federal Railroad Administration-certified engineer; or

(C) Railroad manager.

History. Acts 2019, No. 467, § 1.

U.S. Code. The Rail Safety Improvement Act of 2008, Division A of Pub. L. No. 110-432, referred to in this section, is codified throughout Title 49 of the U.S. Code. Section 402(a) of the act, concerning certification of train conductors, is codified as 49 U.S.C. § 20163, and section 402(b)-(d) of the act, concerning certification of other employees, is codified as a note under 49 U.S.C. § 20162.

Subchapter 6 — Train Service Generally

23-12-603. Department may require passenger trains to stop at all stations — Exception.

(a) The Arkansas Department of Transportation is empowered to require every company or person operating a railroad in Arkansas which runs and operates passenger trains to stop one (1) of its

passenger trains each way every day at all regular stations where tickets are sold whether the station is a flag station or not.

(b) However, if the department after a hearing finds that adequate service for the carriage of passengers, mail, baggage, express, and newspapers between stations is or will be furnished and rendered daily by motor-propelled vehicles on highways, it shall have the power to authorize the railroad company to discontinue stopping the trains at stations.

History. Acts 1941, No. 297, § 1; A.S.A. 1947, § 73-807; Acts 2017, No. 707, § 175.

Amendments. The 2017 amendment redesignated the existing section as (a) and (b); and substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-12-605. Union passengers or freight depots.

(a) The Arkansas Department of Transportation shall have power to require the building and maintaining of union passenger or freight depots, by two (2) or more railroads in any city of the first class or city of the second class in this state, when the business and conditions in the city justify or require such facilities.

(b) The making of any order for the erection and maintaining of any such union passenger or freight depots, or both, shall be prima facie evidence of the need for the facility and reasonableness of the requirement.

History. Acts 1909, No. 277, § 5, p. 814; C. & M. Dig., § 1648; Pope's Dig., § 1969; A.S.A. 1947, § 73-808; Acts 2017, No. 707, § 176.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-12-607. Petitions for establishment, discontinuance, modification, etc., of service — Authority of department.

The Arkansas Department of Transportation is authorized, empowered, and required to hear and consider all petitions filed with it for establishment, discontinuance, enlargement, dualization, or modification of railroad train service, spurs, sidetracks, and platforms.

History. Acts 1907, No. 149, § 1, p. 356; 1907, No. 338, § 1, p. 821; C. & M. Dig., § 1638; Pope's Dig., § 1959; Acts 1961, No. 203, § 1; A.S.A. 1947, § 73-809; Acts 2017, No. 707, § 177.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-12-608. Establishment, discontinuance, modification, etc., of service generally — Investigation of objects sought to be accomplished — Findings.

(a) Within thirty (30) days after the filing of a petition, the Arkansas Department of Transportation shall proceed to make a personal inspection of the conditions complained of and investigate the objects sought

to be accomplished by the petitioners. The department shall have the right and power to summon and swear witnesses. The summons shall be served by any sheriff, constable, or deputy having legal jurisdiction.

(b) The department shall determine the amount, degree, and character of construction, equipment, changes, and enlargements of stations and depots which should be supplied by the railroad, railroad company, its lessee, or operator. The department shall have the power and authority to require a reasonable train service for each and every such railroad station and depot within the State of Arkansas, and its finding shall be binding upon all such railroads within the State of Arkansas.

(c) The department shall file a copy of its findings and decrees with the Secretary of State, the Attorney General, and the circuit clerk of the county wherein the decree is granted.

(d) The department shall serve notice upon the defendant railroad company by delivering a copy of its findings and decrees to the nearest local station agent and by sending by registered mail a copy to the superintendent, general manager, lessee, or operator of the railroad or railroad company.

History. Acts 1907, No. 149, §§ 2, 3, p. 356; 1907, No. 338, §§ 2, 3, p. 821; C. & M. Dig., §§ 1639, 1640; Pope's Dig., §§ 1960, 1961; A.S.A. 1947, §§ 73-810, 73-811; Acts 2017, No. 707, § 178.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-12-609. Establishment, discontinuance, modification, etc., of service generally — Failure to comply with findings and mandate — Penalty.

(a) Any railroad, railroad company, lessee, or operator of the railroad company, which fails or refuses to comply with the findings, decrees, and mandates of the Arkansas Department of Transportation within the time specified therein, shall be deemed guilty of a misdemeanor.

(b) The district prosecuting attorney shall bring the proceeding in any court having competent jurisdiction, and upon conviction the railroad, railroad company, lessee, or operator of the railroad company shall be fined in any sum not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100).

(c)(1) Every day of the violation, refusal, failure, or neglect shall constitute a separate offense.

(2) However, no order for doing anything hereinabove provided shall be made by the department until all parties concerned shall receive ten (10) days' notice of the proposed change.

History. Acts 1907, No. 149, § 4, p. 356; 1907, No. 338, § 4, p. 821; C. & M. Dig., § 1641; Pope's Dig., § 1962; A.S.A. 1947, § 73-812; Acts 2017, No. 707, § 179.

Amendments. The 2017 amendment added the (a), (b), (c)(1) and (c)(2) designations; substituted "Department of Transportation" for "State Highway and Transportation Department" in (a); and, in (b), substituted "The district" for "It shall be proceeded against by the district", inserted "shall bring the proceeding", and

inserted "the railroad, railroad company, lessee, or operator of the railroad company".

23-12-611. Discontinuance, dualization, or modification of agency station — Petitions to reestablish.

(a) Any railroad operating in this state may file with the Arkansas Department of Transportation a notice of discontinuance, dualization, or modification of any of its agency stations together with a statement certified by a proper officer of the railroad to the effect that the agency station had been operating at a financial loss according to standard accounting procedures for not less than one (1) year immediately preceding, or that operating economies would result consistent with public convenience and necessity.

(b) The agency station may be closed or modified ninety (90) days after the date of filing of the notice of discontinuance, dualization, or modification unless a petition for the reestablishment of the discontinued, dualized, or modified agency station, signed by at least twenty-five (25) qualified electors residing in the city, town, or political subdivision where the agency station is located, is filed with the department within sixty (60) days after the date of filing of the notice.

(c) The department is authorized, empowered, and required to hear and consider all petitions for the reestablishment of any agency station discontinued, dualized, or modified by the railroad under authority of this section. The hearing shall be held within sixty (60) days following filing of the petition for reestablishment and following thirty (30) days' written notice of the hearing to the railroad and petitioners.

(d) In determining whether an agency station should be discontinued, dualized, or modified, the standard to be employed is whether the railroad has operated the agency station at a financial loss according to standard accounting procedures for not less than one (1) year immediately preceding the filing of the notice of discontinuance, dualization, or modification, or whether operating economies would result therefrom.

History. Acts 1907, No. 149, § 1, p. 356; 1907, No. 338, § 1, p. 821; C. & M. Dig., § 1638; Pope's Dig., § 1959; Acts 1961, No. 203, § 1; A.S.A. 1947, § 73-809; Acts 2017, No. 707, § 180.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-12-613. Receiver appointed upon attempt to abandon.

(a) If any railroad corporation, manager, or receiver shall attempt to abandon any railroad, or part thereof, by failing to operate its trains, or to resume operation of its trains over its railroad, or part thereof, if the operation of trains has been abandoned, the Arkansas Department of Transportation shall report the attempted abandonment to the Attorney General.

(b) The Attorney General shall, at once, file a suit in behalf of the state against that railroad corporation, manager, or receiver in the

Pulaski County Circuit Court, or of any county through which the railroad passes. Suit shall be filed for the purpose of determining whether the corporation has abused its rights and privileges as a common carrier and granted by the State of Arkansas.

(c)(1) If the court determines that the corporation, manager, or receiver has so failed or refused to carry out its obligations as a common carrier, then the court shall appoint a receiver for the purpose of operating the railroad and providing the service to the public.

(2) The receiver shall have no connection directly or indirectly with the railroad corporation, manager, or receiver prior to the time of his or her appointment, but he or she shall be a good business person and qualified to perform the duties of the receiver.

(d) The receiver shall collect freight and passenger rates as prescribed by law and shall do and perform any and all things necessary in the operation of the trains over the road and shall report to the court at such times as the court may direct.

History. Acts 1947, No. 90, § 1; A.S.A. 1947, § 73-814; Acts 2017, No. 707, § 181.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

Subchapter 10 — Railroad Safety and Regulatory Act of 1993

23-12-1004. Powers and duties.

(a) The State Highway Commission shall make such investigation and studies as it deems necessary to properly exercise the jurisdiction hereby conferred and shall involve Arkansas counties, municipalities, and railroads operating within this state and unions representing railroad employees.

(b) Pursuant to rules providing for an opportunity of notice and hearing, the commission shall promulgate appropriate rules pertaining to the maintenance of railroad crossings of state, county, city, or municipal streets and highways.

History. Acts 1993, No. 726, § 3; 2019, No. 315, § 2412.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b) twice.

23-12-1005. Inadequate action or unreasonable refusal — Action on complaint.

(a)(1)(A) Prior to any request by a state, municipal, or county official for sanctions against any railroad company for violation of any rule promulgated pursuant to this subchapter, the state, municipal, or

county official shall state the claim or complaint in writing by certified mail to the registered agent of the railroad company in question.

(B)(i) Within forty-five (45) days after the receipt of the written claim or complaint by the railroad company, the railroad company shall respond to the claim or complaint, stating with specificity the corrective action taken, any corrective or remedial action planned and the time for its completion, or the reason for any refusal on the part of the railroad to correct the situation.

(ii) This response shall be in writing to the complaining official by certified mail.

(2)(A) In the event the issue is not then resolved to the satisfaction of the complaining official, the official shall notify the State Highway Commission in writing.

(B)(i) Within sixty (60) days after receipt of the complaint, the commission shall hold a hearing on the complaint.

(ii) Notice of the hearing shall be given the railroad and the complainant at least twenty (20) days before the hearing.

(C) After appropriate notice and hearing on the complaint and within twenty (20) days after the hearing, the commission or its designated representative shall determine the adequacy of the railroad's action or the reasonableness of its refusal under the circumstances.

(3)(A) If the commission makes a finding of inadequate action or unreasonable refusal on the part of the railroad based on information presented at a hearing before the commission or before a designated representative of the commission, the railroad company charged with the violation shall be subject to a penalty of not less than two hundred dollars ($200) nor more than ten thousand dollars ($10,000) per occurrence, the penalty to be assessed by the commission.

(B)(i) The decision of the commission may be appealed to the circuit court of the county in which the violation occurred at any time within thirty (30) days after the decision is rendered.

(ii) Provided, the decision of the commission shall be final unless appealed as authorized herein.

(b)(1) If the state owns the highway where the questioned crossing is located, all moneys recovered under the provisions of this section shall be placed into the State Highway and Transportation Department Fund.

(2) All other moneys recovered under this section shall be divided equally between the State Highway and Transportation Department Fund and the general, road, or highway fund of the county or municipality which owns the highway, road, or street where the questioned crossing is located.

History. Acts 1993, No. 726, § 3; 1995, No. 668, § 1; 2019, No. 315, § 2413.

Amendments. The 2019 amendment substituted "rule" for "regulation" in

(a)(1)(A).

23-12-1007. Investigations — Rules.

(a)(1) The State Highway Commission shall make such investigations as it deems necessary, or as requested by state, municipal, or county officials, to properly exercise the exclusive jurisdiction hereby conferred and pursuant to required notice and hearing shall promulgate all necessary orders or rules concerning train operation, train movement, permissible standing time for trains, and all other related matters.

(2) The investigation of crossings shall include, but is not limited to, the reasonable availability or use of other crossings by vehicular or pedestrian traffic, the frequency and necessity of use of the railroad crossing by railroad trains and vehicular and pedestrian traffic, the restriction of emergency and law enforcement vehicles using the crossing, and the hours of frequent use of the crossing.

(3) In the investigation, the commission shall seek the advice of Arkansas counties, municipalities, railroads operating within this state, and unions representing railroad employees.

(b) Provided, unless and until the commission by order or rule provides otherwise, it is unlawful for any corporation, company, or person owning or operating any railroad trains in the state to permit a standing train to obstruct any public highway, road, street, or other railroad crossing for more than ten (10) minutes.

History. Acts 1993, No. 726, § 4; 2019, No. 315, § 2414.

Amendments. The 2019 amendment substituted "Rules" for "Regulations" in the section heading and made similar changes in (a)(1) and (b).

23-12-1008. Unlawful delay — Action on complaint.

(a)(1)(A) Prior to any request by a state, municipal, or county official for sanctions against a railroad company for violation of this section and §§ 23-12-1006 and 23-12-1007, the state, municipal, or county official shall state the claim or complaint in writing, by certified mail, to the registered agent of the railroad company in question.

(B)(i) Within forty-five (45) days after the receipt of the written claim or complaint by the railroad company, the railroad company shall respond to the claim or complaint stating with specificity the reasons for obstructing a crossing for an unlawful period of time.

(ii) This response shall be in writing to the complaining official by certified mail.

(2)(A) In the event the issue is not then resolved to the satisfaction of the complaining official, the official shall notify the State Highway Commission in writing and shall enclose a copy of the complaint and response.

(B)(i) Within sixty (60) days after receipt of the notice, the commission shall hold a hearing on the complaint.

(ii) Notice of the hearing shall be given the railroad and the complainant at least twenty (20) days before the hearing.

(C) The commission or its designated representative, after an appropriate notice and hearing on the complaint, shall determine whether the obstruction was for an unlawful period of time under the circumstances.

(3)(A) If the commission makes such a finding of unlawful delay based on information presented at a hearing before the commission or before its designated representative, the railroad company charged with the violation shall be subject to a penalty to be imposed by the commission of not less than two hundred dollars ($200) nor more than five hundred dollars ($500) per occurrence.

(B)(i) The decision of the commission may be appealed to the circuit court of the county in which the violation occurred at any time within thirty (30) days after the decision is rendered.

(ii) Provided, the decision of the commission shall be final unless appealed as authorized herein.

(b) After the initial ten-minute period or such other period as may be prescribed by rule of the commission, each ten-minute period or other period as may be prescribed by rule of the commission that the crossing is obstructed by a standing train shall constitute a separate offense, and penalties may be imposed accordingly.

(c)(1) If the crossing where a violation occurs is located within the boundaries of a city or town, one-half (½) of the moneys recovered under the provisions of this section and §§ 23-12-1006 and 23-12-1007 shall be placed in the general fund or street fund of the municipality and one-half (½) of the funds shall be placed in the State Highway and Transportation Department Fund.

(2) All other moneys recovered under the provisions of this section shall be divided equally between the State Highway and Transportation Department Fund and the general road fund of the county in which the violation occurred.

History. Acts 1993, No. 726, § 4; 1995, No. 668, § 2; 2019, No. 315, § 2415.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (b) twice.

CHAPTER 13

MOTOR CARRIERS

SUBCHAPTER.

1. General Provisions.
2. Arkansas Motor Carrier Act, 1955.
3. Complaint Proceedings.
6. Registration of Motor Carriers Engaged in Interstate Commerce.
7. Transportation Network Company Services Act.

Subchapter 1 — General Provisions

23-13-101. Use of motor carrier safety improvement — Worker status unchanged — Definitions.

(a) As used in this section:

(1) "Motor carrier safety improvement" means any device, equipment, software, technology, procedure, training, policy, program, or operational practice intended and primarily used to improve or facilitate:

(A) Compliance with traffic safety or motor carrier safety laws;

(B) Motor vehicle safety;

(C) The safety of an operator of a motor vehicle; or

(D) The safety of a third-party public roadway user; and

(2) "Worker status" means the classification under any state law of a motor vehicle driver who engages in the transportation of property for compensation as an agent, employee, jointly employed employee, borrowed servant, or independent contractor for a motor carrier.

(b) The deployment, implementation, or use of a motor carrier safety improvement by, or as required by, a motor carrier or its related entity, including by contract, does not, in whole or in part, affect, impact, or change the worker status of a driver.

History. Acts 2019, No. 782, § 1.

Publisher's Notes. Former § 23-13-101, concerning hours of duty and rest period of drivers, penalties, and exceptions, was repealed by Acts 2005, No. 1691, § 1. The section was derived from Acts 1931, No. 157, §§ 1-3; Pope's Dig., §§ 3450-3452; A.S.A. 1947, §§ 73-1744 — 73-1746; Acts 1993, No. 1212, § 1.

23-13-102. Inspection of licensees — Employment of inspectors — Restraining operations.

(a) The Arkansas Department of Transportation shall have the right to employ one (1) or more inspectors as may be needed for the purpose of making inspections of licensees from time to time.

(b) If any person, firm, or corporation is operating without complying with the provisions of this act, then the Attorney General or any interested party may institute suit in any circuit court where service on the defendant may be had, restraining the further operation of motor vehicles by the person, firm, or corporation until the provisions of this act are complied with.

(c) Nothing contained in this act shall be construed to relieve any motor vehicle carrier from any rule imposed by law or lawful authority.

History. Acts 1927, No. 99, §§ 11, 13; Pope's Dig., § 2029; A.S.A. 1947, §§ 73-1728, 73-1728n; Acts 2017, No. 707, § 182; 2019, No. 315, § 2416.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment substituted "rule" for "regulation" in (c).

Subchapter 2 — Arkansas Motor Carrier Act, 1955

23-13-203. Definitions.

(a) As used in this subchapter, unless the context otherwise requires:

(1) "Broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any motor carrier. A "broker", as principal or agent, sells or offers for sale any transportation subject to this subchapter, or negotiates for, or holds himself or herself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation;

(2) "Certificate" means a certificate of public convenience and necessity issued under authority of the laws of the State of Arkansas to common carriers by motor vehicle;

(3) "Commercial zone" means any municipality within this state together with that area outside the corporate limits of any municipality which is prescribed by the Interstate Commerce Commission [abolished] as a commercial zone;

(4) "Common carrier by motor vehicle" means any person who or which undertakes, whether directly or indirectly, or by lease of equipment or franchise rights, or any other arrangement, to transport passengers or property or any classes of property for the general public by motor vehicle for compensation whether over regular or irregular routes;

(5) "Contract carrier by motor vehicle" means any person not a common carrier included under subdivision (a)(4) of this section who or which, under individual contracts or agreements, and whether directly or indirectly or by lease of equipment or franchise rights or any other arrangements, transports passengers or property by motor vehicle for compensation;

(6) [Repealed.]

(7) "Highway" means the public roads, highways, streets, and ways in the State of Arkansas;

(8)(A) "Household goods carrier" means any motor carrier transporting:

(i) Personal effects and property used or to be used in a dwelling when it is a part of the equipment or supply of the dwelling;

(ii) Furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when they are a part of the stock, equipment, or supply of the stores, offices, museums, institutions, hospitals, or other establishments; and

(iii) Articles, including objects of art, displays and exhibits, voting machines and tabulating machines, including the auxiliary machines or component parts as are necessary to the performance of a complete tabulating process, including, but not limited to, punches, sorters, computers, verifiers, collators, reproducers, interpreters, multipliers, wiring units, and control panels and spare parts therefor, which because of the unusual nature or value require specialized handling and equipment usually employed in moving household goods.

(B)(i) The household goods carriers shall continue to be regulated by the Arkansas Department of Transportation in accordance with this subchapter and all rules made and promulgated by the department.

(ii) Provided, a household goods carrier upon application with the department shall not be required to prove that the proposed services or operations are required by the present or future public convenience and necessity, nor shall the rates of such household goods carriers be subject to regulation by the department;

(9) "Interested parties" includes, in all cases, all carriers operating over the routes or any part thereof or in the territory involved in any application for a certificate of convenience and necessity or a permit, or any application to file or change any schedule or rates, charges, fares, or any rule or practice, and such other parties as the department may deem interested in the particular matter;

(10) "Irregular route" means that the route to be used by a motor carrier is not restricted to any specific highways within the area the motor carrier is authorized to serve;

(11) "Lease" means, as used in connection with the term "motor vehicle", the rental of a motor vehicle by a lessor to a lessee, except to an authorized carrier, with nothing furnished except necessary maintenance;

(12) "License" means a license issued under this subchapter to a broker;

(13) "Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle and any person performing for-hire transportation service without authority from the department;

(14) "Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property or any combination thereof determined by the department, but it does not include any vehicle, locomotive, or car operated exclusively on rails;

(15) "Occasional" means the transportation of persons or property where an emergency exists at the time or place and no authorized service is immediately available;

(16) "Permit" means a permit issued under authority of the laws of the State of Arkansas to contract carriers by motor vehicle;

(17) "Person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof;

(18) "Private carrier" means any person engaged in the transportation by motor vehicle upon public highways of persons or property, or both, but not as a common carrier by motor vehicle or a contract carrier by motor vehicle and includes any person who transports property by motor vehicle, where the transportation is incidental to or in furtherance of any commercial enterprise of the person, which enterprise is one other than transportation; and

(19) "Regular route" means a fixed, specific, and determined course to be traveled by a motor carrier's vehicles rendering service to, from, or between various points, localities, or municipalities in this state.

(b) The "services" and "transportation" to which this subchapter applies includes all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier and used in the transportation of passengers or property or in the performance of any service in connection therewith.

History. Acts 1955, No. 397, § 5; A.S.A. 1947, § 73-1758; Acts 1995, No. 746, § 2; 2017, No. 707, § 183; 2019, No. 315, §§ 2417, 2418.

Amendments. The 2017 amendment repealed (a)(6).

The 2019 amendment deleted "and regulations" following "rules" in (a)(8)(B)(i); and deleted "regulation" following "rule" in (a)(9).

23-13-206. Exemptions.

(a) Nothing in this subchapter shall be construed to include:

(1)(A) Motor vehicles:

(i) Employed solely in transporting schoolchildren and teachers to or from school; and

(ii) Used in carrying:

(a) Set-up houses;

(b) Ordinary livestock;

(c) Unprocessed fish, including shellfish;

(d) Unprocessed agricultural commodities;

(e) Baled cotton;

(f) Cottonseed;

(g) Cottonseed meal;

(h) Cottonseed hulls;

(i) Cottonseed cake;

(j) Rice hulls;

(k) Rice bran;

(l) Rice mill feed;

(m) Rice mill screenings;

(n) Soybean meal; and

(o) Commercial fertilizer, but not including the component parts used in the manufacture thereof.

(B) However, carriers of such exempt commodities and passengers shall be subject to safety of operation and equipment standards provisions prescribed or hereafter prescribed by the State Highway Commission.

(C) Additionally, for-hire carriers of such exempt commodities shall file with the commission evidence of security for the protection of the public in the same amount and to the same extent as nonexempt carriers, as provided in § 23-13-227;

(2)(A) Taxicabs or other motor vehicles performing a bona fide taxicab service.

(B) "Bona fide taxicab service", as employed in this section, means and refers only to service rendered by motor-driven vehicles having a seating capacity not in excess of six (6) passengers and used for the transportation of persons for hire, which vehicles are owned and operated by a person, firm, or corporation authorized by the governing authorities of municipalities to conduct a taxicab business over or upon the streets and public ways;

(3) Any private carrier of property and motor vehicles employed in the hauling of gravel, rock, dirt, bituminous mix materials, riprap, quarried stone, crushed stone, and similar materials, and any movements and services performed by wreckers and wrecker services. Provided, all of the above private carriers, motor vehicles, and wrecker and wrecker services shall be subject to the provisions prescribed, including all rules made and promulgated pursuant to this subchapter, with respect to safety of operation and equipment standards;

(4) Trolley buses operated by electric power or other buses furnishing local passenger transportation similar to street railway service, unless and to the extent that the commission shall from time to time find that such an application is necessary to carry out the policy of this subchapter as to safety of operation or standards of equipment, apply to:

(A)(i) The transportation of passengers or property wholly within a municipality or between contiguous municipalities or within a commercial zone, as defined in § 23-13-203, adjacent to, and commercially a part of, any such municipalities, except when the transportation is under a common control, management, or arrangement for a continuous carriage, or shipment to or from a point outside such municipalities or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular routes is also lawfully engaged in the intrastate transportation of passengers over the entire length of the routes in accordance with the laws of this state.

(ii) The rights, duties, and privileges of any motor carrier previously granted a certificate of convenience and necessity by the

commission to operate in, through, to, or from municipalities or in, through, to, or from a commercial zone or territory contiguous to a municipality shall not be impaired or abridged by reason of the subsequent annexation of the municipality or territory by another municipality, and any such motor carrier shall remain subject to the exclusive jurisdiction and control of the commission; or

(B) The occasional or reciprocal transportation of passengers or property for compensation:

(i) By any person not engaged in transportation by motor vehicle as a regular occupation or business, except when such transportation is sold, offered for sale, provided, procured, or furnished or arranged for;

(ii) By any person who holds himself or herself or itself out as one who sells or offers for sale transportation wholly or partially subject to this subchapter, or negotiates for, or holds himself or herself or itself out, by solicitation, advertisements, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation; or

(iii) By any person or his or her or its agent, servant, or employee who regularly engages in the exempt transportation of passengers for hire;

(5) Motor vehicles controlled and operated by an agricultural cooperative association as defined in § 2-2-101 et seq. and §§ 2-2-201, 2-2-202, and 2-2-401 — 2-2-428 or any similar act of another state or by the United States Agricultural Marketing Act, as amended, or by a federation of such cooperative associations, if the federation possesses no greater powers or purposes than cooperative associations so defined;

(6) Motor carriers of property, except household goods carriers. Provided, the motor carriers of property shall be subject to all safety of operation and equipment standards provisions prescribed by the commission. Provided, further, all motor carriers of property shall be subject to the provisions of §§ 23-13-252 and 23-13-265 and all rules and regulations made and promulgated by the commission with respect to financial fitness and insurance requirements;

(7)(A) The transportation of passengers by private or public motor carrier either under contract or by cooperative agreement with the State of Arkansas when the transportation is provided exclusively in connection with, or as a result of, federally or state-funded assistance programs serving the public need.

(B) Provided, the motor carriers shall be subject to the provisions prescribed, including all rules made and promulgated pursuant to this subchapter, with respect to safety of operation and equipment standards; and

(8) The transportation of passengers in a private vehicle with a maximum seating capacity of fifteen (15) passengers, including the driver, provided the transportation is for the purposes of vanpooling or carpooling.

(b) In addition, the following are declared to be exempt from this subchapter except to the extent that the vehicles transporting the

following products shall be subject to the safety and equipment standards of the commission:

(1) The transportation of live poultry, unmanufactured products of poultry, and related commodities. Poultry, unmanufactured products of poultry, and related commodities include the following:

(A) Additives, such as injected butter, gravy, seasoning, etc., in an amount not in excess of five percent (5%) by weight, sold in or along with uncooked poultry;

(B) Advertising matter, in reasonable amounts, transported along with poultry and poultry products;

(C) Blood of poultry from which corpuscles have been removed by centrifugal force;

(D) Carcasses:

(i) Raw, in marble-size chunks;

(ii) Cut up, raw;

(iii) Cut up, precooked or cooked;

(iv) Breaded or battered;

(v) Cut up, precooked or cooked, marinated, breaded, or battered;

(vi) Deboned, cooked or uncooked; and

(vii) Deboned, cooked or uncooked, in rolls or diced;

(E) Dinners, cooked;

(F) Dressed;

(G) Eggs, albumen, liquid;

(H) Eggs, albumen, liquid, pasteurized;

(I) Eggs, dried;

(J) Eggs, frozen;

(K) Eggs, liquid, whole or separated;

(L) Eggs, oiled;

(M) Eggs, omelet mix consisting of fresh broken eggs and milk with minute amounts of salt and pepper and seasoning, packaged;

(N) Eggs, powder, dried;

(O) Eggs, shelled;

(P) Eggs, whites;

(Q) Eggs, whole, with added yolks, dried;

(R) Eggs, whole, with added yolks;

(S) Eggs, whole standardized by substraction of whites;

(T) Eggs, yolks, dried;

(U) Eggs, yolks, liquid;

(V) Eggs, yolks;

(W) Fat, as removed from poultry, not cooked;

(X) Feathers;

(Y) Feathers, ground or feather meal;

(Z) Feathers, ground, combined with dehydrated poultry offal;

(AA) Offal, including blood and natural by-products of the killing and processing of poultry for market;

(BB) Picked;

(CC) Rolled in batter but uncooked;

(DD) Rolls, containing sectioned and deboned poultry, cooked;

(EE) Sticks, cooked;

(FF) Stuffed; and

(GG) Stuffing, packed with, but not in, bird;

(2) The transportation of livestock and poultry feed including all materials or supplementary substances necessary or useful to sustaining the life or promoting the growth of livestock or poultry, if such products, excluding products otherwise exempt under this section, are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production;

(3) The transportation of sawdust, wood shavings, and wood chips; and

(4) The transportation of ethylene glycol antifreeze, gasoline, diesel, liquefied petroleum gas, kerosene, aviation gasoline, and jet fuel.

(c)(1) Except as otherwise provided in this subchapter, the transportation of passengers by motor vehicle shall continue to be regulated by the commission.

(2) Provided, a carrier of passengers, which carrier proposes strictly charter services or charter operations for the transportation of passengers, upon application with the commission, shall not be required to prove that the proposed charter services or charter operations are required by the present or future public convenience and necessity.

History. Acts 1955, No. 397, § 5; 1963, No. 89, § 1; 1963, No. 220, § 1; 1971, No. 175, § 1; 1971, No. 335, § 1; 1983, No. 74, § 1; 1985, No. 438, § 1; 1985 (1st Ex. Sess.), No. 23, § 1; 1985 (1st Ex. Sess.), No. 29, § 1; A.S.A. 1947, §§ 73-1758, 73-1758.1; Acts 1991, No. 33, § 1; 1991, No. 296, § 1; 1995, No. 746, § 2; 2019, No. 315, §§ 2419, 2420.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the second sentence of (a)(3) and in (a)(7)(B).

23-13-207. Regulation by department.

The regulation of the transportation of passengers or property by motor carriers over the public highways of this state, the procurement thereof, and the provisions of facilities is vested in the Arkansas Department of Transportation.

History. Acts 1955, No. 397, § 3; A.S.A. 1947, § 73-1756; Acts 2017, No. 707, § 184.

Amendments. The 2017 amendment deleted "therefor" following "facilities", and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-208. General duties and powers of department.

It shall be the duty of the Arkansas Department of Transportation:

(1) To regulate common carriers by motor vehicle as provided in this subchapter. To that end, the department may establish reasonable requirements with respect to continuous and adequate service and transportation of baggage and express. It may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, and safety of operation and equipment

which shall conform as nearly as may be consistent with the public interest to the systems of accounts, records, and reports and the requirements as to the preservation of records and safety of operation and equipment now prescribed or which from time to time may be prescribed by the Interstate Commerce Commission [abolished] for common carriers by motor vehicles engaged in interstate or foreign commerce;

(2) To regulate contract carriers by motor vehicle as prescribed by this subchapter. To that end, the department may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, and safety of operation and equipment now prescribed or which may from time to time be prescribed by the Interstate Commerce Commission [abolished] for contract carriers by motor vehicles engaged in interstate or foreign commerce;

(3) To regulate private carriers, as defined in this subchapter, with respect to safety of their operations and equipment;

(4) To regulate brokers as provided in this subchapter. To that end, the department may establish reasonable requirements with respect to licensing, financial responsibility, accounts, records, reports, operations, and practices of any such persons;

(5) To avail itself of the assistance of any of the several research agencies of the United States Government and of any agency of this state having special knowledge of any such matter, for the purpose of carrying out the provisions pertaining to safety;

(6) To administer, execute, and enforce all other provisions of this subchapter, to make all necessary orders in connection therewith, and to prescribe rules and procedures for such administration; and

(7) Upon complaint in writing to the department by any person, state board, organization, or body politic, or upon the department's own initiative without complaint, to investigate whether any motor carrier or broker has failed to comply with any provisions of this subchapter or with any requirements thereof. If the department finds upon investigation that the motor carrier or broker has failed to comply therewith, the department shall issue appropriate order to compel the carrier or broker to comply therewith. Whenever the department is of the opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss that complaint.

History. Acts 1955, No. 397, § 6; A.S.A. 1947, § 73-1759; Acts 2017, No. 707, § 185; 2019, No. 315, § 2421.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language.

The 2019 amendment deleted "regulations" following "rules" in (6).

23-13-209. Mandatory injunction — Requirement that department take jurisdiction.

Where the Arkansas Department of Transportation, in respect to any matter arising under this subchapter, has issued a negative order solely

because of a supposed lack of power, any party in interest may file a bill of complaint in the Pulaski County Circuit Court. The court, if it determines that the department has the power, may force by writ of mandatory injunction the department to take jurisdiction.

History. Acts 1955, No. 397, § 7; 1959, No. 267, § 1; A.S.A. 1947, § 73-1760; Acts 2017, No. 707, § 186.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-210. Hearings before department.

(a) Any matter arising in the administration of this subchapter concerning which a hearing is required shall be heard by the Arkansas Department of Transportation.

(b) A decision of the majority of the members of the department shall constitute its decision.

(c) The department may assign or refer the matter to an employee or board of employees for hearing and written report and recommended order, and the department shall review and may determine the matter upon the record theretofore made.

(d) All hearings shall be held in the office of the department except that if in the discretion of the department circumstances justify it, hearings may be held at any place in the state.

(e) The members of the department, the secretary thereof, and employees designated by the department to hold hearings shall have the power to administer oaths and to issue subpoenas requiring the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents and to take testimony by deposition, relating to any matter under consideration.

(f) In connection with any proceedings under this subchapter in which a hearing is required, or is deemed necessary by the department, not less than ten (10) days' notice shall be afforded, except in hearings provided for in § 23-13-224. Opportunity for intervention by interested parties in connection with any such proceeding shall be afforded.

(g)(1) The department or its designated employees are authorized to confer with or hold joint hearings with any authorities of the United States or any state, or any department of the State of Arkansas, in connection with any matter arising in any proceeding under this subchapter.

(2) This department is also authorized to avail itself of the cooperation, services, records, and facilities of such authorities as fully as may be necessary in the enforcement of any provision of this subchapter.

History. Acts 1955, No. 397, § 7; A.S.A. 1947, § 73-1760; Acts 2017, No. 707, § 187.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-13-211. Appeals — Entitlement.

Any final order made under this subchapter is subject to the same right of appeal by any party to the proceedings as is provided by § 23-2-425, in respect to appeals from the order of the Arkansas Department of Transportation.

History. Acts 1955, No. 397, § 7; 1959, No. 267, § 1; A.S.A. 1947, § 73-1760; Acts 2017, No. 707, § 188.

Amendments. The 2017 amendment substituted "is subject" for "shall be subject" and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-212. Appeals — Notice.

Upon the filing of a motion for appeal, the Arkansas Department of Transportation shall forthwith serve notice of the appeal upon all parties to the proceeding appealed from.

History. Acts 1955, No. 397, § 7; 1959, No. 267, § 1; A.S.A. 1947, § 73-1760; Acts 2017, No. 707, § 189.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-213. Appeals — Stay of operating authority pending appeal.

If the party appealing desires to stay the beginning of the operating authority granted by the Arkansas Department of Transportation, the party shall file with the motion for appeal a bond, with surety thereon approved by the Pulaski County Circuit Court. The bond shall be conditioned that the appealing party will pay to the party in whose favor the order appealed from operates all damages which the party may suffer by reason of the stay of operation under the order in the event the orders shall be affirmed or sustained upon final adjudication. The operating authority granted by the department shall be stayed until the matter has been finally adjudicated.

History. Acts 1955, No. 397, § 7; 1959, No. 267, § 1; A.S.A. 1947, § 73-1760; Acts 2017, No. 707, § 190.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-214. Appeals — Transcripts.

(a) Where any appeal is taken, as provided in §§ 23-13-211 — 23-13-215 or by other statutes with regard to appeals from orders of the Arkansas Department of Transportation, the secretary of the department shall cause to be prepared, for use on the appeal, an accurate and true copy of the record of proceedings before the department, which shall contain only such portions of the record as shall be designated by the person taking such appeal in the notice of appeal filed.

(b) Thereupon, the secretary of the department shall certify the transcript as a true and accurate copy of the record of proceedings on appeal from the department.

(c) The transcript shall be prepared in conformity with the rules of the Supreme Court and of the Pulaski County Circuit Court regarding the filing of transcripts in civil cases, and the original record of proceedings before the department shall remain on file with the department.

(d) When there are designated for inclusion in the transcript of the record exhibits which, because of their form, nature, or bulk, cannot be conveniently copied, then the department may order, upon proper application made by the party taking the appeal, that the original exhibits be appended to the secretary's transcript of the record. The exhibits may be removed from the offices of the department for the purpose of filing with the transcript on appeal.

(e)(1) The party filing a motion for an appeal shall pay to the secretary of the department the amount of the cost of preparing the transcript of the proceedings before the transcript is deposited with the clerk of the Pulaski County Circuit Court.

(2) All fees received by the department in payment for the preparation of transcripts of proceedings under this subchapter shall be computed at the rate of fifty cents (50¢) for each sheet and shall be paid into the State Treasury by the department to the account of the fund from which appropriations are made for the support of the department.

History. Acts 1955, No. 397, § 7; 1959, No. 267, § 1; A.S.A. 1947, § 73-1760; Acts 2017, No. 707, § 191.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-13-215. Appeals — Filing fees.

The secretary of the Arkansas Department of Transportation shall immediately notify the party filing the motion for appeal the date of the deposit of the transcript with the clerk of the Pulaski County Circuit Court. Within ten (10) days from the date of the deposit of the transcript, the party shall pay to the clerk of the court the required filing fee.

History. Acts 1955, No. 397, § 7; 1959, No. 267, § 1; A.S.A. 1947, § 73-1760; Acts 2017, No. 707, § 192.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-216. Agent for service of process, notices, or orders.

(a)(1) It shall be the duty of every motor carrier to file with the Arkansas Department of Transportation a designation in writing of the name and post office address of a person maintaining a residence within this state upon whom or which service of notices or orders may be made

under this subchapter. The designation may from time to time be changed by like writing similarly filed.

(2) Service of process or orders in proceedings under this subchapter shall be made upon a carrier by personal service upon the person so designated by it or by registered mail addressed to the designated person at the address filed.

(b)(1) Service of notices of hearings shall be by United States mail and publication one (1) time in a newspaper of general circulation in Pulaski County.

(2) In default of designation of an agent for service of process, service of any notice or order may be made by posting in the office of the secretary of the department.

(c) Whenever notice is given by mail as provided in this section, the date of mailing shall be considered as the time when notice is served.

History. Acts 1955, No. 397, § 21; A.S.A. 1947, § 73-1774; Acts 2017, No. 707, § 193.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

23-13-218. Certificate of public convenience and necessity — Requirement.

No common carrier by motor vehicle subject to the provisions of this subchapter shall engage in any operation on any public highway in this state unless there is in force with respect to such a carrier a certificate of public convenience and necessity issued by the Arkansas Department of Transportation authorizing such an operation.

History. Acts 1955, No. 397, § 8; A.S.A. 1947, § 73-1761; Acts 2017, No. 707, § 194.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-219. Certificate of public convenience and necessity — Application and fees.

(a) Applications for certificates of public convenience and necessity shall be made in writing to the Arkansas Department of Transportation, be verified under oath, shall be in such form, contain such information, and be accompanied by proof of service upon such interested parties as the department by rule shall require.

(b) Every application shall be accompanied by certified check made payable to the department for the sum of fifty dollars ($50.00). The funds shall be collected by the department to be deposited into the State Treasury to the credit of the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 1955, No. 397, § 8; 1983, No. 565, § 2; A.S.A. 1947, § 73-1761; Acts 2017, No. 707, § 195; 2019, No. 315, § 2422.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment substituted "rule" for "regulation" in (a).

23-13-220. Certificate of public convenience and necessity — Issuance — Notice and hearing.

(a)(1) Subject to the provisions of this subchapter, a certificate of public convenience and necessity shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this subchapter and the requirements and rules of the Arkansas Department of Transportation thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise the application shall be denied. The burden of proof shall be upon the applicant.

(2) However, no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than regular routes, and between fixed termini, except as the carrier may be authorized to engage in special or charter operations.

(b) No certificate shall be issued by the department except upon a hearing held at least twenty (20) days after the service of notice to interested parties of its time and place.

(c) In granting applications for certificates, the department shall take into consideration:

(1) The reliability and financial condition of the applicant and his or her sense of responsibility toward the public;

(2) The transportation service being maintained by any railroad, street railway, or motor carrier;

(3) The likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year;

(4) The effect which such proposed transportation service may have upon other forms of transportation service; and

(5) Any other matters tending to show the necessity or want of necessity for granting the application.

History. Acts 1955, No. 397, § 9; A.S.A. 1947, § 73-1762; Acts 2017, No. 707, § 196; 2019, No. 315, § 2423.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

The 2019 amendment substituted "requirements and rules" for "requirements, rules, and regulations" in (a)(1).

23-13-221. Certificate of public convenience and necessity — Terms and conditions.

(a)(1) Any certificate of public convenience and necessity issued under this subchapter shall specify:

(A) The service to be rendered and the route over which;

(B) The fixed termini, if any, between which;

(C) The intermediate and off-route points, if any, at which; and

(D) In case of operations not over specified routes or between fixed termini, the territory within which the motor carrier is authorized to operate.

(2)(A) At the time of issuance and from time to time thereafter, there shall be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the routes of the carrier and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Arkansas Department of Transportation under this subchapter.

(B) However, no terms, conditions, or limitations shall restrict the right of the carrier to add to his or her or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate as the development of the business and the demands of the public shall require.

(b) A common carrier by motor vehicle operating under any such certificate may occasionally deviate from the route over which, or the fixed termini between which, it is authorized to operate under the certificate under such general or special rules as the department may prescribe.

(c) Any common carrier by motor vehicle transporting passengers under a certificate issued under this subchapter may transport to any place within the state special or chartered parties under such rules as the department may prescribe.

(d) A certificate for the transportation of passengers may include authority to transport, in the same vehicle with the passengers, newspapers, baggage of passengers, express, or mail, or authority to transport baggage of passengers in a separate vehicle.

(e) No certificate issued under this subchapter shall confer any proprietary or property rights in the use of the public highways.

History. Acts 1955, No. 397, §§ 9, 10; A.S.A. 1947, §§ 73-1762, 73-1763; Acts 2017, No. 707, § 197; 2019, No. 315, § 2424.

Amendments. The 2017 amendment redesignated (a)(2) as (a)(2)(A) and (a)(2)(B); and substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(2)(A).

The 2019 amendment deleted "and regulations" following "rules" in (b) and (c).

23-13-222. Permits for contract carriers — Requirement.

No person shall engage in the business of a contract carrier by motor vehicles over any public highways in this state unless there is in force with respect to the carrier a permit issued by the Arkansas Department of Transportation authorizing such persons to engage in such business.

History. Acts 1955, No. 397, § 11; A.S.A. 1947, § 73-1764; Acts 2017, No. 707, § 198.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-223. Permits for contract carriers — Application and fees.

(a) Applications for permits for contract carriers by motor vehicles shall be made to the Arkansas Department of Transportation in writing, be verified under oath, and shall be in such form, contain such information, and be accompanied by proof of service upon such interested parties as the department by rule may require.

(b) Every application shall be accompanied by a certified check made payable to the department for the sum of fifty dollars ($50.00). The funds shall be collected by the department to be deposited into the State Treasury to the credit of the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 1955, No. 397, § 11; 1983, No. 565, § 3; A.S.A. 1947, § 73-1764; Acts 2017, No. 707, § 199; 2019, No. 315, § 2425.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment substituted "rule" for "regulation" in (a).

23-13-224. Permits for contract carriers — Issuance.

(a) Subject to this subchapter, a permit for a contract carrier by motor vehicle shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the applications, if it is found that the applicant is fit, willing, and able to properly perform the service of a contract carrier by motor vehicle and to conform to the provisions of this subchapter and the lawful requirements and rules of the Arkansas Department of Transportation, and the proposed operation, to the extent authorized by the permit, will promote the public interest and the policy declared in § 23-13-202; otherwise the application shall be denied.

(b) No permit shall be issued by the department except upon a hearing at least twenty (20) days after service of notice to interested parties of the time and place thereof.

(c) In granting applications for permits, the department shall take into consideration:

(1) The reliability and financial condition of the applicant and his or her sense of responsibility toward the public;

(2) The transportation service being maintained by any railroad, street railway, or motor carrier;

(3) The likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which the proposed transportation service may have upon existing transportation service; and

(4) Any other matters tending to show the necessity or want of necessity for granting the application.

History. Acts 1955, No. 397, § 11; A.S.A. 1947, § 73-1764; Acts 2017, No. 707, § 200; 2019, No. 315, § 2426.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment substituted "requirements and rules" for "requirements, rules, and regulations" in (a).

23-13-226. Dual operation.

No person shall at the same time hold under this subchapter a certificate as a common carrier and permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory, unless for good cause shown the Arkansas Department of Transportation shall find that the certificate and permit will promote the public interest and the policy declared in § 23-13-202.

History. Acts 1955, No. 397, § 12; A.S.A. 1947, § 73-1765; Acts 2017, No. 707, § 201.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-227. Certificates and permits — Security for the protection of the public.

(a) No certificate or permit shall be issued to a motor carrier or remain in force unless the carrier complies with such reasonable rules as the Arkansas Department of Transportation shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualification as a self-insurer or other securities or agreements in such reasonable amount as the department may require, conditioned to pay, within the amount of the surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, any final judgment recovered against the motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under the certificate or permit or for loss or damage to the property of others.

(b)(1) In its discretion and under such rules as it shall prescribe the department may require any such common carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the department, to be conditioned upon the carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carriers in connection with its transportation service.

(2) Any carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of the shipper or consignee under any such bond, policies, or insurance or other securities or agreements, to the extent of the sum so paid, plus any court costs and reasonable attorney's fees

paid by the carrier in defending any action brought thereon by the shipper or consignee.

(c) The reasonable rules of the department authorized by this section shall conform as nearly as may be consistent with the public interest to those rules made by the United States Surface Transportation Board from time to time with respect to surety for the protection of the public by motor carriers engaged in interstate or foreign commerce.

(d) Any motor carrier who has qualified as a self-insurer in accordance with the rules of the United States Surface Transportation Board governing motor carriers engaged in interstate or foreign commerce shall be prima facie deemed qualified as a self-insurer in the State of Arkansas.

(e) In any action against any motor carrier operating under the provisions of this subchapter, whether in law or equity, the insurer, insurance company, or obligor in any policy of insurance or bond given by the carrier in compliance with this section shall not be joined as a party to the suit and shall not be a proper party thereto.

(f) Upon any motor carrier's failure to pay any final judgment rendered against it, the judgment creditor may maintain an action in any court of competent jurisdiction against the insurer, insurance company, or obligor in any policy of insurance, or bond, or obligation, filed under this section, to compel payment of the judgment.

History. Acts 1955, No. 397, § 15; A.S.A. 1947, § 73-1768; Acts 2017, No. 707, § 202; 2019, No. 315, § 2427.

Amendments. The 2017 amendment, in (a), deleted "and regulations" following "rules" and substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment deleted "and regulations" following "rules" in (b)(1), (c), and (d).

23-13-229. Temporary authority.

(a) To provide motor carrier service for which there is an urgent and immediate need to, from, or between points within a territory having no motor carrier service deemed capable of meeting that need, the Arkansas Department of Transportation in its discretion and without hearing or other proceeding may grant temporary authority for a period not exceeding ninety (90) days for the service by common or contract carrier, as the case may be. Satisfactory proof of the urgent and immediate need shall be made by affidavit or other verified proof, as the department shall prescribe.

(b) The temporary authority shall be granted only upon payment of a filing fee in the amount of twenty-five dollars ($25.00) and compliance with the requirements of §§ 23-13-227 and 23-13-244. The filing fees shall be collected by the department to be deposited into the State Treasury to the credit of the General Revenue Fund Account of the State Apportionment Fund.

(c) After the temporary authority is granted, the department shall notify any carrier already authorized to perform all or any part of the service so authorized temporarily. Upon application in writing by the

carrier, the department shall hold such hearings and make such further determination with respect to such temporary authority as the public interest shall require.

(d) The grant of temporary authority shall not be extended for any cause.

(e) Issuance of such temporary authority shall create no presumption that corresponding permanent authority will be granted thereafter.

History. Acts 1955, No. 397, § 6; 1983, No. 565, § 1; A.S.A. 1947, § 73-1759; Acts 2017, No. 707, § 203.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-13-230. Brokers — Licenses — Rules for protection of public.

(a)(1) A person shall not for compensation sell or offer for sale transportation subject to this subchapter; make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation; or hold himself or herself or itself out by advertisements, solicitation, or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation unless that person holds a broker's license issued by the Arkansas Department of Transportation to engage in such transactions.

(2) In the execution of any contract, agreement, or arrangement to sell, provide, procure, furnish, or arrange for such transportation, it shall be unlawful for such a person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this subchapter.

(3) The provisions of this subsection shall not apply to any carrier holding a certificate or a permit under the provisions of this subchapter or to any bona fide employee or agent of such a motor carrier, so far as concerns transportation to be furnished wholly by such a carrier or jointly with other motor carriers holding like certificates or permits or with a common carrier by railroad, express, or water.

(b) A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this subchapter and the requirements and rules of the department thereunder and that the proposed service, to the extent authorized by the license, will promote the public interest and policy declared in this subchapter; otherwise the application shall be denied.

(c) The department shall prescribe reasonable rules for the protection of travelers or shippers by motor vehicle, to be observed by any person holding a brokerage license. No such license shall be issued or remain in force unless the person shall have furnished a bond or other security approved by the department, in such form and amount as will insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements, or arrangements therefor.

(d) The department and its agents shall have the same authority as to accounts, reports, and records, including inspection and preservation thereof, of any person holding a brokerage license issued under the provisions of this section, that they have under this subchapter with respect to motor carriers subject thereto.

History. Acts 1955, No. 397, § 13; A.S.A. 1947, § 73-1766; Acts 2017, No. 707, § 204; 2019, No. 315, § 2428.

Amendments. The 2017 amendment, in (a)(1), substituted "A person shall not" for "No person shall", deleted "shall" preceding "make any contract", deleted "shall" preceding "hold himself", and substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment substituted "requirements and rules" for "requirements, rules, and regulations" in (b); and deleted "and regulations" following "rules" in the first sentence of (c).

23-13-232. Certificates, permits, and licenses — Transfer, assignment, etc.

(a) Certificates, permits, and licenses shall not be assigned, transferred, or hypothecated in any manner, nor shall the operation under any such permit, certificate, or license be leased without authority of the Arkansas Department of Transportation and on written application, and after ten (10) days' notice, to parties in interest and hearing.

(b) The transfer, lease, assignment, or hypothecation of the permits, certificates, or licenses shall not be authorized when the department finds the action will be inconsistent with the public interest or will have the effect of destroying competition or creating a monopoly, nor where it appears that reasonably continuous service under the authority or that part of the authority granted by the permit, certificate, or license which is sought to be transferred has not been rendered prior to the application for transfer, assignment, or hypothecation.

(c)(1) All applications for transfer must be made on proper forms prescribed by the department.

(2) There must be attached to such application for a transfer of a certificate, permit, or license a joint affidavit executed by the vendor and vendee certifying that all accrued taxes, station rents, wages of employees, and all other indebtedness incident to the vendor's operation have been paid in full or, if such is not the case, will be assumed by the vendee. Provided, the provisions of this subsection shall not apply in any respect to either the vendor or the vendee, where the vendor has filed for protection under the federal bankruptcy laws and is transferring the authority as part of a reorganization or liquidation under an order directing the sale entered under the federal bankruptcy laws.

(d) Every such application for the transfer of a certificate or permit shall be accompanied by a certified check or money order in the amount of fifty dollars ($50.00) made payable to the department. The funds shall be collected by the department to be deposited into the State Treasury to the credit of the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 1955, No. 397, § 14; 1983, No. 565, § 4; A.S.A. 1947, § 73-1767; Acts 1992 (1st Ex. Sess.), No. 35, § 1; 2017, No. 707, § 205.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-13-233. Certificates, permits, and licenses — Amendment, revocation, and suspension.

(a) Any certificates, permits, or licenses, upon application of the holder thereof and in the discretion of the Arkansas Department of Transportation, may be amended or revoked, in whole or in part, or may upon complaint or on the department's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for:

(1) Willful failure to comply with any provision of this subchapter, with any lawful order or rule of the department promulgated thereunder, or with any term, condition, or limitation of the certificate, permit, or license;

(2) Failure to render reasonably continuous service in the transportation of all of the commodities authorized to be transported over all of the routes authorized to be traversed;

(3) Failure to file a complete annual motor carrier report pursuant to Acts 1927, No. 129, as amended; or

(4) Failure to timely pay ad valorem property taxes.

(b) It is the intent of this section to require the department to suspend or revoke, after notice and hearing as hereafter provided, all or such part of the authority granted by any certificate which is not exercised reasonably continuously.

(c) No certificate, permit, or license shall be revoked, except under application of the holder or violation of § 23-13-227, unless the holder thereof willfully fails to comply within a reasonable time, not less than thirty (30) days, to be fixed by the department, with a lawful order of the department commanding obedience to the provisions of this subchapter, or to the rules of the department, or to the terms, conditions, or limitation of such certificate, permit, or license found by the department to have been violated by the holder.

History. Acts 1955, No. 397, § 14; 1983, No. 579, § 1; 1983, No. 602, § 1; A.S.A. 1947, § 73-1767; Acts 2017, No. 707, § 206; 2019, No. 315, §§ 2429, 2430.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language of (a).

The 2019 amendment substituted "order or rule" for "order, rule, or regulation" in (a)(1); and deleted "or regulations" following "rules" in (c).

23-13-234. Operation without certificate or permit prohibited — Violation of terms, conditions, etc., of certificate, permit, or license prohibited.

(a)(1) Any motor carrier using the highways of this state without first having obtained a permit or certificate from the Arkansas Department of Transportation, as provided by this subchapter, or who, being a

holder thereof, violates any term, condition, or provision thereof shall be subject to a civil penalty to be collected by the department, after notice and hearing, in an amount not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(2) If the penalty is not paid within ten (10) days from the date of the order of the department assessing the penalty, twenty-five percent (25%) thereof shall be added to the penalty.

(3) Any amounts collected from the penalties provided for under this subsection shall be deposited by the department into the State Treasury to the credit of the General Revenue Fund Account of the State Apportionment Fund.

(b)(1) Any person required by this subchapter to obtain a certificate of convenience and necessity as a common carrier or a permit as a contract carrier and operates as such a carrier without doing so shall be guilty of a violation. Upon conviction, he or she shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for the first such offense and not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each subsequent offense.

(2) Each day of the violation shall be a separate offense.

(c)(1) Any person violating any other provision or any term or condition of any certificate, permit, or license, except as otherwise provided in § 23-13-258, shall be guilty of a violation and upon conviction shall be fined not more than one hundred dollars ($100) for the first offense and not more than five hundred dollars ($500) for any subsequent offense.

(2) Each day of the violation shall constitute a separate offense.

(3) In addition thereto, the person shall be subject to the civil penalties provided in subsection (a) of this section.

History. Acts 1955, No. 397, § 22; 1971, No. 532, § 1; 1983, No. 565, § 5; A.S.A. 1947, § 73-1775; Acts 2005, No. 1994, § 148; 2017, No. 707, § 207.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

23-13-235. Annual fees charged carriers — Remittance — Disposition of funds.

(a)(1) From each common or contract carrier of passengers or property, there shall be collected an annual fee for the registration of insurance. The annual registration fee to be collected from each common or contract carrier of passengers or property holding only a certificate or permit issued pursuant to this subchapter shall be five dollars ($5.00) for each bus, truck, or truck-tractor of the carrier to be operated in this state.

(2) The annual registration fee for the registration of insurance to be collected from any other carrier, including a carrier holding a certificate or permit issued by the United States Surface Transportation Board, on

behalf of the State of Arkansas shall be collected under the base state registration program and shall be five dollars ($5.00) per motor vehicle.

(3) The Arkansas Department of Transportation shall also collect fees under the base state registration program on behalf of and for all other participating states of travel from all carriers based in the State of Arkansas. All fees collected on behalf of other participating states shall be collected in the amount required by that state and remitted to that state under the rules adopted by the United States Surface Transportation Board.

(b) All fees as set out in this section shall be due and payable on or before January 1 of each year to cover the ensuing calendar year. However, the fees to be collected from the holders of temporary authority shall be due and payable before the authority is first exercised.

(c) Nothing in this section shall be construed as requiring the payment of more than the fees for each bus, truck, or truck-tractor so used as set out in subsection (a) of this section, but the fee shall be paid annually for each motor vehicle, as the term "motor vehicle" is defined in rules of the United States Surface Transportation Board.

(d) Failure on the part of any person or carrier to pay the annual registration fees as provided in this section shall be a violation of this subchapter, and upon conviction the person or carrier shall be punished as provided in § 23-13-257.

History. Acts 1955, No. 397, § 26; 1957, No. 343, § 1; 1983, No. 565, § 7; A.S.A. 1947, § 73-1779; Acts 1993, No. 1027, § 2; 2017, No. 707, § 208; 2019, No. 315, §§ 2431, 2432.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(3).

The 2019 amendment deleted "and regulations" following "rules" in the second sentence of (a)(3) and in (c).

23-13-236. Common carriers — Duties as to transportation of passengers and property — Rates, charges, rules, etc.

(a) It shall be the duty of every common carrier of passengers by motor vehicle:

(1) To establish reasonable through routes with other common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers;

(2) To establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable rules and practices relating thereto and relating to the issuance, form, and substance of tickets; the carrying of personal, sample, and excess baggage; the facilities for transportation; and all other matters relating to or connected with the transportation of passengers; and

(3) In case of joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of the participating carriers.

(b) It shall be the duty of every common carrier of property by motor vehicle:

(1) To provide safe and adequate service, equipment, and facilities for the transportation of property; and

(2) To establish, observe, and enforce just and reasonable rates, charges, and classifications and just and reasonable rules and practices relating thereto, and relating to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

History. Acts 1955, No. 397, § 16; A.S.A. 1947, § 73-1769; Acts 2019, No. 315, §§ 2433, 2434.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(2) and (b)(2).

23-13-238. Common carriers — Rates, fares, rules, etc. — Complaints.

Any person, state board, organization, or body politic may make complaint in writing to the Arkansas Department of Transportation that any rate, fare, charge, classification, rule, or practice in effect or proposed to be put into effect is or will be in violation of this subchapter.

History. Acts 1955, No. 397, § 16; A.S.A. 1947, § 73-1769; Acts 2017, No. 707, § 209; 2019, No. 315, § 2435.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment deleted "regulations" following "rules" in the section heading and made a similar change in the section.

23-13-239. Common carriers — Rates, fares, rules, etc. — Determination by department.

(a)(1) Whenever, after hearing, upon complaint, or in an investigation on its own initiative, the Arkansas Department of Transportation shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carriers by railroad, express, or water for transportation, or that any classification, rule, or practice whatsoever of the carriers affecting the rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, unjustly discriminatory, or unduly preferential, or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, or practice thereafter to be made effective.

(2) Whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint, the department shall establish through routes and joint rates, fares, charges, rules, or practices applicable to the transportation of passengers by common carriers by motor vehicle or establish the maximum or minimum rates, fares, or

charges to be charged and the terms and conditions under which the through routes shall be operated.

(b) Nothing in this subchapter shall empower the department to prescribe or in any manner regulate the rate, fare, or charge for interstate transportation or for any service connected therewith.

History. Acts 1955, No. 397, § 16; A.S.A. 1947, § 73-1769; Acts 2017, No. 707, § 210; 2019, No. 315, § 2436.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

The 2019 amendment deleted "regulations" following "rules" in the section heading and made similar changes in (a)(1) and (a)(2).

23-13-240. Common carriers — Rates, charges, rules, etc. — Establishment and division of joint rates, charges, etc.

(a)(1) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad or express or water.

(2) Common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad or water.

(b) In case of joint rates, fares, or charges, it shall be the duty of the carriers parties thereto to establish just and reasonable rules and practices in connection therewith and to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any participating carriers.

(c)(1) Whenever, after hearing, upon complaint or upon its own initiative the Arkansas Department of Transportation is of the opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property by common carriers by motor vehicle, or by such carriers in conjunction with common carriers by railroad, express, or water, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto, whether agreed upon by such carriers, or any of them, or otherwise established, the department shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers.

(2) In cases where the joint rate, fare, or charge was established pursuant to a finding or order of the department, the department may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers and require adjustment to be made in accordance therewith.

(3) The order of the department may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such

other date subsequent as the department finds justified. In the case of joint rates described by the department, the order as to divisions may be made effective as a part of the original order.

History. Acts 1955, No. 397, § 16; A.S.A. 1947, § 73-1769; Acts 2017, No. 707, § 211; 2019, No. 315, § 2437.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (c)(1).

The 2019 amendment deleted "regulations" following "rules" in the section heading; and substituted "rules" for "regulations" in (b).

23-13-241. Common carriers — Schedules, rules, etc., affecting rates, fares, etc. — Hearings — Suspension proceedings.

(a) Whenever any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers, or by any such carrier in conjunction with a common carrier or carriers by railroad, express, or water, or any rule or practice affecting the rate, fare, or charge, or the value of the service thereunder is filed with the Arkansas Department of Transportation, the department is authorized and empowered to enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the lawfulness of a rule or practice, upon the complaint of any interested party or upon its own initiative, at once, if the department so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice.

(b)(1) Pending the hearing and the decision thereon, the department from time to time may suspend the operations of the schedule and defer the use of the rate, fare, or charge or such rule or practice for a period of thirty (30) days by filing with the schedule and delivering to the carriers affected thereby a statement in writing of its reasons for the suspension.

(2) If the proceeding has not been concluded and a final order made within the thirty-day period, the department from time to time, by order, may extend the period of suspension, but not for a longer period in the aggregate than ninety (90) days beyond the time when it would otherwise go into effect. The department may make the order with reference thereto as would be proper in a proceeding instituted after it had become effective.

(c) If the proceeding has not been concluded and an order made within the period of suspension, the proposed change, or rate, fare, or charge or classification, rule, or practice shall go into effect at the end of the period.

History. Acts 1955, No. 397, § 16; A.S.A. 1947, § 73-1769; Acts 2017, No. 707, § 212; 2019, No. 315, § 2438.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "regulation" following "rule" in (a) twice, and in (b)(1) and (c).

23-13-242. Common carriers — Rates, charges, rules, etc. — Factors of reasonableness or justness.

(a) In the exercise of its power to prescribe just and reasonable rates for the transportation of passengers or property by common carrier by motor vehicle, the Arkansas Department of Transportation shall give due consideration, among other factors, to:

(1) The inherent advantages of transportation by carriers to the effect of rates upon the movement of traffic by the carriers;

(2) The need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and

(3) The need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(b)(1) In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any common carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of the carrier, either goodwill, earning power, or the certificate under which the carrier is operating.

(2) In applying for and receiving a certificate under this subchapter, any common carrier shall be deemed to have agreed to the provisions of this subsection on its own behalf and on behalf of all transferees of the certificate.

History. Acts 1955, No. 397, § 16; A.S.A. 1947, § 73-1769; Acts 2017, No. 707, § 213.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language of (a).

23-13-244. Tariffs of common carriers by motor vehicle.

(a)(1) Whenever an applicable tariff has not already been prescribed by the Arkansas Department of Transportation, every common carrier by motor vehicle shall file with the department and shall keep open to public inspection at all times tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property between points on its own route and points on the route of any other common carrier, or on the routes of any common carrier by railroad, express, or water, when a through route and joint rate shall have been established.

(2) The rates, fares, and charges shall be stated in terms of lawful money of the United States.

(3) The tariffs required by this section shall be published, filed, and posted in such form and manner and shall contain such information as the department by rule shall prescribe.

(4) The department is authorized to reject any tariff filed with it which is not in consonance with this subchapter and with its rules. Any tariff so rejected by the department shall be void, and its use shall be unlawful.

(b)(1) No common carrier by motor vehicle shall charge, demand, collect, or receive a greater, lesser, or different compensation for transportation, or for any service in connection therewith, between the points enumerated in the tariff, than those rates, fares, and charges specified in the tariffs in effect at the time.

(2) No such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise any portion of the rates, fares, or charges so specified, nor shall that carrier extend to any person any privilege or facilities for transportation except as are specified in its tariff.

(c)(1) No change shall be made in any rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle except after thirty (30) days' notice of the proposed change filed and posted in accordance with subsection (a) of this section.

(2) The notice shall plainly state the change proposed to be made and the time when the change will take effect.

(3) The department, in its discretion and for good cause shown, may allow such change upon notice less than that specified in this section or may modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(d) No common carrier by motor vehicle, unless otherwise provided by this subchapter, shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the passengers or property are transported by the carrier have been prescribed, or filed and published in accordance with the provisions of this subchapter.

History. Acts 1955, No. 397, § 17; A.S.A. 1947, § 73-1770; Acts 2017, No. 707, § 214; 2019, No. 315, § 2439.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

The 2019 amendment substituted "rule" for "regulation" in (a)(3) and made a similar change in the first sentence of (a)(4).

23-13-245. Contract carriers — Schedule of minimum rates and charges, rules, and practices — Requirement — Filing, posting, and publishing required.

(a) It shall be the duty of every contract carrier by motor vehicle to establish and observe reasonable minimum rates and charges for any service rendered or to be rendered in the transportation of passengers or property or in connection therewith and to establish and observe reasonable minimum rates, fares, and charges.

(b) It shall be the duty of every contract carrier by motor vehicle to file with the Arkansas Department of Transportation and to publish and keep open for public inspection, in the form and manner prescribed by the department, schedules containing the minimum rates or charges of the carrier actually maintained and charged for the transportation of passengers or property and any rule or practice affecting such rates or charges and the value of the service thereunder.

(c) No contract carrier, unless otherwise provided by this subchapter, shall engage in the transportation of passengers or property unless the minimum charges for the transportation by the carrier have been published, filed, and posted in accordance with the provisions of this subchapter.

History. Acts 1955, No. 397, § 17[18]; A.S.A. 1947, § 73-1771; Acts 2017, No. 707, § 215; 2019, No. 315, § 2440.

Amendments. The 2017 amendment, in (b), substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment deleted "regulations" following "rules" in the section heading and made a similar change in (b).

23-13-246. Contract carriers — Schedule of minimum rates and charges, rules, and practices — Adherence to schedule required — Exceptions.

(a) No contract carrier by motor vehicle shall demand, charge, or collect a less compensation for the transportation than the charges filed in accordance with § 23-13-245, as affected by any rule or practice so filed, or may be prescribed by the Arkansas Department of Transportation from time to time.

(b) It shall be unlawful for any contract carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept, or receive less than the minimum charges so filed or prescribed.

(c) However, any contract carrier, or any class or group thereof, may apply to the department for the relief from the provisions of § 23-13-245, and the department after hearing may grant such relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the transportation policy declared in this subchapter.

History. Acts 1955, No. 397, § 17[18]; A.S.A. 1947, § 73-1771; Acts 2017, No. 707, § 216; 2019, No. 315, § 2441.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "regulations" following "rules" in the section heading and made a similar change in (a).

23-13-247. Contract carriers — Schedule of minimum rates and charges, rules and practices — Notice of proposed changes.

(a) No reduction shall be made in any charge of a contract carrier by motor vehicle either directly or by means of any change in any rate, rule, or practice affecting the charge or the value of services thereunder except after thirty (30) days' notice of the proposed change filed in the manner and form set forth in § 23-13-245. However, in its discretion and for good cause shown, the Arkansas Department of Transportation may allow such a change upon less notice or modify the requirements of § 23-13-245 with respect to posting and filing of the schedules, either in

particular instances or by general order applicable to special or peculiar circumstances or conditions.

(b) The notice shall plainly state the change proposed to be made and the time when the change will take effect.

History. Acts 1955, No. 397, § 17[18]; A.S.A. 1947, § 73-1771; Acts 2017, No. 707, § 217; 2019, No. 315, § 2442.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "regulations" following "rules" in the section heading; and substituted "rule" for "regulation" in the first sentence of (a).

23-13-249. Contract carriers — Schedule of rules, etc., affecting rates, fares, etc. — Hearings — Suspension proceedings.

(a) Whenever a contract carrier by motor vehicle files with the Arkansas Department of Transportation any schedule stating a charge for a new service or a reduced charge directly, or by means of any rule or practice, for transportation of passengers or property, the department may enter upon a hearing concerning the lawfulness of such charge or such rule or practice upon complaint of interested parties or upon its own initiative at once, and if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice.

(b) Pending the hearing and the decision thereon, the department from time to time may suspend the operations of the schedule and defer the use of the charge, or the rule or practice for a period of thirty (30) days, by filing such schedules and delivering to the carrier affected thereby a statement in writing of its reasons for the suspension.

(c) If the proceeding has not been concluded and a final order made within the thirty-day period, the department from time to time may extend the period of suspension by order, but not for a longer period in the aggregate than ninety (90) days beyond the time when it would otherwise go into effect.

(d)(1) After the hearing, whether completed before or after the charge, rule, or practice goes into effect, the department may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective.

(2) If the proceeding has not been concluded and an order made therein within the period of suspension, the proposed change in any rule or practice shall go into effect at the end of such a period.

History. Acts 1955, No. 397, § 17[18]; A.S.A. 1947, § 73-1771; Acts 2017, No. 707, § 218; 2019, No. 315, § 2443.

Amendments. The 2017 amendment, in (a), substituted "a contract" for "any contract", substituted "Department of Transportation" for "State Highway and Transportation Department", and substituted "may enter" for "is authorized and empowered to enter".

The 2019 amendment deleted "regulation" following "rule" in (a) twice, and in (b), (d)(1), and (d)(2).

23-13-250. Contract carriers — Schedule of minimum rates and charges, rules and practices — Establishment by department.

(a) Whenever, after hearing, upon complaint or upon its own initiative, the Arkansas Department of Transportation finds that any minimum rate or charge of any contract carrier by motor vehicle, that any rule or practice of any such carrier affecting the minimum rate or charge, or that the value of the service thereunder for the transportation of passengers or property or in connection therewith contravenes the transportation policy declared in this subchapter, or is in contravention of any provision of this subchapter, the department may prescribe such just and reasonable minimum rates, charges, rules, or practices as in its judgment may be necessary or desirable in the public interest and desirable to promote the policy and will not be in contravention of any provision of this subchapter.

(b) The minimum rate or charge, or such rule or practice so prescribed by the department, shall give no advantage or preference to any carrier in competition with any common carrier by motor vehicle subject to this subchapter, which the department may find to be undue or inconsistent with the public interest and the transportation policy declared in this subchapter.

(c) The department shall give due consideration to the cost of services rendered by contract carriers and to the effect of the minimum rate or charge, or such rule or practice, upon the movement of traffic by such carriers.

History. Acts 1955, No. 397, § 17[18]; A.S.A. 1947, § 73-1771; Acts 2017, No. 707, § 219; 2019, No. 315, § 2444.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "regulations" following "rules" in the section heading and made similar changes throughout the section.

23-13-251. Collection of rates and charges.

(a) A common carrier by motor vehicle shall not deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid except under such rules as the Arkansas Department of Transportation from time to time may prescribe to govern the settlement of all such rates and charges, including rules for weekly or monthly settlement and those to prevent unjust discrimination or undue preference or prejudice.

(b) However, the provisions of this section shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported to the United States, for any

department, bureau, or agency thereof, for any state or territory, or political subdivision thereof, or for the District of Columbia.

History. Acts 1955, No. 397, § 23; A.S.A. 1947, § 73-1776; Acts 2017, No. 707, § 220; 2019, No. 315, § 2445.

Amendments. The 2017 amendment, in (a), substituted "A common" for "No common", inserted "not" following "shall", and substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment deleted "and regulations" following "rules" twice in (a).

23-13-252. Receipts or bills of lading.

(a) Every carrier of property by motor vehicle subject to the provisions of this subchapter which receives property for transportation within this state shall issue a receipt or bill of lading therefor.

(b) The form of the receipt or bill of lading shall be prescribed by the Arkansas Department of Transportation and shall conform as nearly as may be consistent with the public interest to the receipt or bill of lading prescribed for interstate carriers of property under the Interstate Commerce Act [repealed], as amended.

(c) The rights and liabilities of the shippers, consignors, consignees, and carriers, whether originating carriers, intermediate carriers, or delivering carriers, shall be those defined by Section 20, Subsection 11 of Part I of the Interstate Commerce Act [repealed], as amended.

History. Acts 1955, No. 397, § 19; A.S.A. 1947, § 73-1772.

Publisher's Notes. This section is being set out to correct a reference in (b) from "Arkansas State Highway and Transportation Department" to "Arkansas Department of Transportation", for consistency with Acts 2017, No. 707.

23-13-255. Access to property, equipment, and records.

The Arkansas Department of Transportation or its duly authorized agents at all times shall have access to all lands, buildings, or equipment of motor carriers and private carriers used in connection with their operation and also to all pertinent accounts, records, documents, and memoranda kept or required to be kept by motor carriers and private carriers.

History. Acts 1955, No. 397, § 20; A.S.A. 1947, § 73-1773; Acts 1991, No. 297, § 1.

Publisher's Notes. This section is being set out to correct a reference from "Arkansas State Highway and Transportation Department" to "Arkansas Department of Transportation", for consistency with Acts 2017, No. 707.

23-13-257. Violations by carriers, shippers, brokers, etc., or employees, agents, etc. — Penalties.

Any person, whether a carrier, shipper, consignee, or broker, or any officer, employee, agent, or representative thereof who shall knowingly offer, grant, or give or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this subchapter; who

by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device shall knowingly assist, suffer, or permit any persons, natural or artificial, to obtain transportation of passengers or property subject to this subchapter for less than the applicable fare, rate, or charge; who shall knowingly by any such means or otherwise fraudulently seek to evade or defeat rules as in this subchapter is provided for motor carriers or brokers; or who shall violate any of the rules, including safety rules, prescribed or hereafter prescribed by the State Highway Commission pursuant to the provisions of Title 23 of this Code, shall be guilty of a violation. Upon conviction, that person, unless otherwise provided in this chapter, shall be fined not more than five hundred dollars ($500) for the first offense and not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for any subsequent offense.

History. Acts 1955, No. 397, § 22; A.S.A. 1947, § 73-1775; Acts 1993, No. 1023, § 1; 2005, No. 1994, § 455; 2019, No. 315, § 2446.

Amendments. The 2019 amendment substituted "rules" for "regulations" three times in the first sentence.

23-13-258. Operation of motor vehicle while in possession of, consuming, or under influence of any controlled substance or intoxicating liquor prohibited — Definition.

(a)(1) Any person operating or being in physical control of a motor vehicle, which motor vehicle is susceptible at the time of such operation or physical control to any rules of the State Highway Commission regarding the safety of operation and equipment of that motor vehicle, who commits any of the following acts shall be guilty of a violation and upon conviction for the first offense shall be subject to a fine of not less than two hundred dollars ($200) nor more than one thousand dollars ($1,000):

(A) Operating or being in physical control of such a motor vehicle if he or she possesses, is under the influence of, or is using any controlled substance;

(B) Operating or being in physical control of such a motor vehicle if he or she possesses, is under the influence of, or is using any other substance that renders him or her incapable of safely operating a motor vehicle; or

(C)(i) Consumption of or possession of an intoxicating liquor, regardless of its alcoholic content, or being under the influence of an intoxicating liquor while in physical control of such a motor vehicle.

(ii) However, no person shall be considered in possession of an intoxicating liquor solely on the basis that an intoxicating liquor or beverage is manifested and being transported as part of a shipment.

(2) Upon the second and subsequent convictions, that person shall be subject to a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(b) As used in this section, "controlled substance" shall have the same meaning ascribed to that term in the Uniform Controlled Substances Act, § 5-64-101 et seq., and the rules issued pursuant to the Uniform Controlled Substances Act, § 5-64-101 et seq.

(c) This section does not abrogate any of the provisions of the Omnibus DWI or BWI Act, § 5-65-101 et seq., and any person violating subsection (a) of this section who may be charged with a violation of the Omnibus DWI or BWI Act, § 5-65-101 et seq., shall be charged with a violation of the Omnibus DWI or BWI Act, § 5-65-101 et seq., rather than with a violation of this section.

History. Acts 1955, No. 397, § 22; 1971, No. 532, § 1; A.S.A. 1947, § 73-1775; Acts 1993, No. 1022, § 1; 2005, No. 1994, § 149; 2015, No. 299, § 32; 2019, No. 315, § 2447.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the introductory language of (a)(1) and in (b).

23-13-259. Lessor to unauthorized persons deemed motor carrier.

Any person who, by lease or otherwise, permits the use of a motor vehicle by other than a carrier holding authority from the Arkansas Department of Transportation and who furnishes in connection therewith a driver, either directly or indirectly, or in any manner whatsoever exercises any control, or assumes any responsibility over the operation of the vehicle, during the period of the lease or other device, shall be deemed a motor carrier.

History. Acts 1955, No. 397, § 22; A.S.A. 1947, § 73-1775.

Publisher's Notes. This section is being set out to correct a reference from "Arkansas State Highway and Transportation Department" to "Arkansas Department of Transportation", for consistency with Acts 2017, No. 707.

23-13-261. Injunction against violation of subchapter, rules, etc., or terms and conditions of certificate, permit, or license.

If any motor carrier or broker operates in violation of any provision of this subchapter, except as to the reasonableness of rates, fares, or charges, and the discriminatory character thereof, or any rule, requirement, or order thereunder, or of any term or condition of any certificate, permit, or license, the Arkansas Department of Transportation or its duly authorized agent may apply to the Pulaski County Circuit Court or to any circuit court of the State of Arkansas where the motor carrier operates for the enforcement of the provision of this subchapter, or of the rule, requirement, order, term, or condition, and enjoining upon it or them obedience thereto.

History. Acts 1955, No. 397, § 22; A.S.A. 1947, § 73-1775; Acts 2019, No. 315, § 2448.

Amendments. The 2019 amendment deleted "regulations" following "rules" in the section heading and made similar changes in the section.

23-13-262. Actions to recover penalties.

(a) An action to recover a penalty under §§ 23-13-234 and 23-13-257 — 23-13-264 or to enforce the powers of the Arkansas Department of Transportation under this subchapter or any other law may be brought in any circuit court in this state in the name of the State of Arkansas, on relation to the department, and shall be commenced and prosecuted to final judgment by the counsel to the department.

(b) In any such action, all penalties incurred up to the time of commencing the action may be sued for and recovered therein.

(c) The commencement of an action to recover a penalty shall not be or be held to be a waiver of the right to recover any other penalty.

History. Acts 1955, No. 397, § 22; 1983, No. 565, § 5; A.S.A. 1947, § 73-1775; Acts 2003, No. 1117, § 3.

Publisher's Notes. This section is being set out to correct a reference in (a) from "Arkansas State Highway and Transportation Department" to "Arkansas Department of Transportation", for consistency with Acts 2017, No. 707.

23-13-265. Exempt motor carrier to possess annual receipt.

(a)(1) It is declared unlawful for any motor carrier of property who is exempt from certain provisions of this subchapter pursuant to § 23-13-206(a)(6) to use any of the public highways of this state for the transportation of property for hire in intrastate commerce without possessing a copy of an annual receipt from the State Highway Commission permitting those operations.

(2) Copies of the annual receipt shall be made and maintained in the cab of the power unit of each motor vehicle operated over the highways of this state while transporting property for hire intrastate.

(3)(A) Every application for a permit for the transportation of property by a carrier shall be in writing on a form to be specified by the commission.

(B) The application shall contain and be accompanied by the following:

(i) The name and trade name, if any, and address or location of the principal office or place of business of the applicant;

(ii) A statement giving full information concerning the ownership, reasonable value, and physical condition of vehicles and other property to be used by the applicant in the intrastate operations;

(iii) A full and complete financial statement giving detailed information concerning the financial condition of the applicant;

(iv) Proof of public liability insurance in the amounts set out in all rules made and promulgated by the commission;

(v) In the event the motor carrier did not hold a valid certificate or permit authorizing intrastate transportation by motor vehicle in this

state on December 31, 1994, remittance of a processing fee in the amount of twenty-five dollars ($25.00);

(vi) Remittance of an insurance filing fee in the amount of five dollars ($5.00) for each motor vehicle, truck, or truck-tractor, to be operated in the State of Arkansas in intrastate operations;

(vii)*(a)* Remittance of a copy of the motor carrier's latest United States Department of Transportation safety rating or, in the event the carrier has not been given a safety rating, a signed notarized statement indicating the company's intention to comply with all United States Department of Transportation safety regulations.

(b) At any time as may be practical, a physical inspection of the equipment may be made by the Arkansas Highway Police Division of the Arkansas Department of Transportation;

(viii) At the option of the applicant, the motor carrier may request that any and all laws, regulations, or other provisions relating to uniform cargo liability rules, uniform bills of lading and receipts for property being transported, uniform cargo credit rules, or antitrust immunity for joint line rates or routes, classification, and mileage guides, apply to the carrier; and

(ix) Any other information that may be required by the commission.

(b)(1) Every motor carrier of property complying to the satisfaction of the commission with the provisions of subsection (a) of this section shall be issued a receipt for the current year indicating the name of the motor carrier's company, the principal place of business of the carrier, and the number of motor vehicles to be operated in Arkansas.

(2)(A) Copies of the receipt shall be made by the motor carrier and shall be maintained in the power unit of each motor vehicle operated over the highways of Arkansas while transporting property for hire intrastate.

(B) The receipt shall be presented by the driver of the motor vehicle for inspection by any authorized government personnel.

(C) Failure to carry the receipt and maintain adequate proof of public liability insurance shall subject the motor carrier to the civil and criminal penalties and fines as are authorized by this subchapter.

(c)(1) Every motor carrier of property which held a valid certificate or permit authorizing intrastate transportation by motor vehicle in the state on December 31, 1994, shall continue to be authorized to transport property for hire in the state and shall be issued an annual receipt after complying with the provisions of subdivisions (a)(3)(B)(iv), (vi), (viii), and (ix) of this section. Provided, neither the previously held certificate, the previously held permit, nor any annual receipt issued pursuant to this section shall have any asset value.

(2) Every motor carrier of property initially complying with all the provisions of subsection (a) of this section to the satisfaction of the commission and issued an annual receipt shall thereafter be issued an annual receipt upon complying with subdivisions (a)(3)(B)(iv), (vi), (viii), and (ix) of this section.

(d) The annual fee required by subdivision (a)(3)(B)(vi) of this section shall not be required for each motor vehicle if the motor carrier of property otherwise remits the proper annual registration fees to the commission pursuant to § 23-13-235, or the motor carrier of property otherwise remits the proper annual registration fees for the benefit of the State of Arkansas to the motor carrier's base state.

(e) Notwithstanding any other provision of this section to the contrary, the commission shall have the authority to periodically review the motor carrier's fitness and shall have the authority to suspend or revoke the annual receipt or other credential granting the right of the motor carrier to operate intrastate if the motor carrier is determined by the commission to be unfit or unsafe, or fails to maintain adequate public liability insurance.

(f) The commission shall have the authority to make and promulgate rules for the implementation of this section.

(g) All fees received by the commission pursuant to subsection (a) of this section shall be deposited with the Treasurer of State and classified as general revenues for distribution and usage as provided by the laws of this state; provided, one and one-half percent (1.5%) of all the funds so deposited shall be classified as special revenues and transferred by the Treasurer of State on the last business day of each month in which they are deposited to the State Highway and Transportation Department Fund to be utilized by the Arkansas Department of Transportation for the purpose of administering this subchapter.

History. Acts 1995, No. 746, § 3; 2019, No. 315, §§ 2449, 2450.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(3)(B)(iv) and (f).

Subchapter 3 — Complaint Proceedings

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-13-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Department" means the Arkansas Department of Transportation;

(2) "Motor vehicle" means any automobile, truck, trailer, semitrailer, tractor, motor bus, or other self-propelled or motor-driven vehicle used upon any of the public highways of the state for the purpose of transporting persons or property; and

(3) "Person" means and includes any individual, firm, copartnership, corporation, company, or association or their lessees, trustees, or receivers.

History. Acts 1939, No. 315, §§ 1-4; A.S.A. 1947, §§ 73-1730 — 73-1733.

Publisher's Notes. This section is being set out to correct a reference in (1) from "Arkansas State Highway and Transportation Department" to "Arkansas Department of Transportation", for consistency with Acts 2017, No. 707.

23-13-302. Authority of department.

The Arkansas Department of Transportation may, in all matters within its jurisdiction, issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings pending before the department; may administer oaths, examine witnesses, compel the production of records, books, papers, files, documents, contracts, correspondence, agreements, or accounts necessary for any investigation being conducted; and may certify official acts.

History. Acts 1939, No. 315, § 7; A.S.A. 1947, § 73-1736; Acts 2017, No. 707, § 221.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-303. Commencement of action before department.

(a) Upon any complaint in writing being made by any person, or by the Arkansas Department of Transportation on its own motion, setting forth any act or thing done or omitted to be done by any person in violation, or claimed violation, of any provision of § 23-13-102 or of any order or rule of the department, the department shall enter the complaint upon its docket.

(b)(1) The department shall immediately serve a copy of the complaint upon each defendant, together with a notice directed to each defendant requiring that the matter complained of be answered in writing within ten (10) days of the date of service of the notice.

(2) However, the department in its discretion may require particular cases to be answered within a shorter time, and the department for good cause shown may extend the time in which an answer may be filed.

History. Acts 1939, No. 315, § 5; A.S.A. 1947, § 73-1734; Acts 2017, No. 707, § 222.

Amendments. The 2017 amendment added the (a), (b)(1), and (b)(2) designations; substituted "Department of Transportation" for "State Highway and Transportation Department" in (a); and substituted "The department" for "It" in (b)(1).

23-13-304. Service of process and notices.

(a) All process issued by the Arkansas Department of Transportation shall extend to all parts of the state.

(b) Any process, together with the services of all notices issued by the department, as well as copies of complaints, rules, and orders of the department, may be served by a member of the Division of Arkansas State Police or any person authorized to serve process issued out of courts of law or by registered mail as the department may direct.

(c) In the event any process is directed to any nonresident who is authorized to do business in this state, the process may be served upon the agent designated by the nonresident for the service of process, and service upon the agent shall be as sufficient and as effective as if served upon the person himself or herself.

History. Acts 1939, No. 315, §§ 10, 11; A.S.A. 1947, §§ 73-1739, 73-1740; Acts 2017, No. 707, § 223; 2019, No. 315, § 2451.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment substituted "rules, and orders" for "rules, orders, and regulations" in (b).

23-13-305. Time and place of hearing.

Upon the filing of the answer provided for in § 23-13-303, the Arkansas Department of Transportation shall set a time and place for the hearing. Notice of the time and place of the hearing shall be served not less than ten (10) days before the time set therefor unless the department finds that public necessity requires the hearing at an earlier date.

History. Acts 1939, No. 315, § 6; A.S.A. 1947, § 73-1735; Acts 2017, No. 707, § 224.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-306. Findings and order of department — Time for taking effect.

(a)(1) After the conclusion of any hearing, the Arkansas Department of Transportation within sixty (60) days shall make and file its findings and order, with its opinion, if any.

(2) Its findings shall be in sufficient detail to enable any court in which any action of the department is involved to determine the controverted questions presented by the proceeding.

(b) A copy of the order certified under the seal of the department shall be served upon the person against whom it runs or his or her attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys.

(c)(1) The order shall take effect and become operative within fifteen (15) days after the service thereof unless otherwise provided.

(2) If, in the judgment of the department, an order cannot be complied with within fifteen (15) days, the department may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order. On application and for good cause shown, it may extend the time for compliance fixed in the order.

History. Acts 1939, No. 315, § 12; A.S.A. 1947, § 73-1741; Acts 2017, No. 707, § 225.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).

23-13-307. Revocation of license, permit, or certificate.

(a) In the event the Arkansas Department of Transportation finds that the defendant is guilty upon any complaint filed and proceeding had, and that the provisions of § 23-13-102 or the rules or orders of the department have been willfully and knowingly violated and that a motor vehicle was used in the violation, the department shall forthwith deliver a certified copy of its findings and order to the Secretary of the Department of Finance and Administration.

(b) It shall be the duty of the secretary to forthwith revoke and take up the license plates issued upon any vehicles used in the violations. This penalty shall apply to the vehicles used in the violation regardless of whether the vehicle was being used by the violator by reason of special ownership, ownership, lease, or otherwise.

(c) In addition to the penalty set forth in subsection (b) of this section, if the violator holds a permit or certificate issued by the department authorizing it to engage in the transportation of persons or property for hire, then the permit or certificate may also be revoked by the department.

History. Acts 1939, No. 315, § 13; A.S.A. 1947, § 73-1742; Acts 2017, No. 707, § 226; 2019, No. 315, § 2452; 2019, No. 910, § 3507.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" throughout the section.

The 2019 amendment by No. 315 deleted "regulations" following "rules" in (a).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a).

23-13-308. Appeal to Pulaski County Circuit Court.

Any person aggrieved by any findings and order of the Arkansas Department of Transportation may appeal to the Pulaski County Circuit Court in the way and manner provided for appeals from the department.

History. Acts 1939, No. 315, § 14; A.S.A. 1947, § 73-1743; Acts 2017, No. 707, § 227.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-309. Order or subpoena of department enforceable upon application to court.

In case of failure on the part of any person to comply with any lawful order of the Arkansas Department of Transportation, or with any subpoena or subpoena duces tecum, or to testify concerning any matter on which he or she may be lawfully interrogated, any court of record of general jurisdiction or a judge thereof upon application of the department may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court, or of the refusal to testify therein.

History. Acts 1939, No. 315, § 8; A.S.A. 1947, § 73-1737; Acts 2017, No. 707, § 228.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-13-310. Witness fees and costs.

(a) Witnesses who are summoned before the Arkansas Department of Transportation shall be paid the same fees and mileage as are paid to witnesses in courts of record.

(b) Any party to a proceeding at whose instance a subpoena is issued and served shall pay the costs incident thereto and the fees for mileage of all his or her witnesses.

History. Acts 1939, No. 315, § 9; A.S.A. 1947, § 73-1738; Acts 2017, No. 707, § 229.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

Subchapter 6 — Registration of Motor Carriers Engaged in Interstate Commerce

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-13-603. Implementation and administration duties.

(a) The Secretary of the Department of Finance and Administration has oversight over the implementation and administration of the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq.

(b) The secretary is vested with the following powers and has the following duties:

(1) To promulgate such regulations as are necessary to participate in the Unified Carrier Registration Agreement;

(2) To collect and remit such fees as determined by the Unified Carrier Registration Plan Board of Directors;

(3) To cooperate with the various law enforcement agencies to ensure compliance with and enforcement of the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., and regulations; and

(4) To do all things necessary, pursuant to the state and federal law, to enable this state to participate in the Unified Carrier Registration Agreement.

History. Acts 2007, No. 232, § 2; 2009, No. 164, § 4; 2019, No. 910, §§ 3508, 3509.

Amendments. The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a); and substituted "secretary" for "director" in the introductory language of (b).

23-13-604. Registration fees.

(a) Any fees collected by the Secretary of the Department of Finance and Administration under this section shall be classified as special revenues and shall be deposited into the State Treasury.

(b) Upon receipt of the funds and if not prohibited by the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., the Treasurer of State shall:

(1) Deduct three percent (3%) of the funds as a charge by the state for its services as specified in this section; and

(2) Credit the three percent (3%) to the Constitutional Officers Fund and the State Central Services Fund, as defined in the Revenue Classification Law, § 19-6-101 et seq., or to any successor State

Treasury fund or funds established by law to replace the Constitutional Officers Fund and the State Central Services Fund.

(c) The net amount of the fees collected by the secretary under this section shall be:

(1) Transferred by the Treasurer of State on the last business day of each month to the State Highway and Transportation Department Fund; and

(2) Distributed and expended in the manner directed by the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., for the payment of expenses incurred by the Arkansas Department of Transportation for motor carrier law enforcement and safety operations.

History. Acts 2007, No. 232, § 2; 2009, No. 164, § 5; 2017, No. 707, § 230; 2019, No. 910, §§ 3510, 3511.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (c)(2).

The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a); and substituted "secretary" for "director" in the introductory language of (c).

23-13-605. Violation — Enforcement — Penalties.

(a)(1) A person who is subject to the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., and who uses the highways of this state without first registering in accordance with this subchapter is guilty of a violation.

(2) The Division of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas Department of Transportation, and local authorities may enforce this subsection.

(b) A person who is found guilty or enters a plea of guilty or nolo contendere under this section shall be ordered to pay a fine of:

(1) For a first offense, not less than one hundred dollars ($100) or more than five hundred dollars ($500); and

(2) For a second or subsequent offense, not less than one hundred dollars ($100) or more than one thousand dollars ($1,000).

(c)(1) Fifty percent (50%) of the amount of the fines imposed and collected under this section shall be remitted by the tenth day of each month to the Administration of Justice Funds Section on a form provided by the Division of Administrative Services for deposit into the General Revenue Fund Account of the State Apportionment Fund.

(2) Fifty percent (50%) of the amount of the fines imposed and collected under this section shall remain in the jurisdiction in which the violation occurred.

History. Acts 2007, No. 232, § 2; 2009, No. 164, § 6; 2017, No. 707, § 231.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(2).

Subchapter 7 — Transportation Network Company Services Act

SECTION.

RESEARCH REFERENCES

ALR. Liability and Regulation of Ride-Sharing Services Using Social Media. 6 A.L.R.7th Art. 1 (2015).

23-13-718. Records — Inspection.

(a) A transportation network company shall maintain:

(1) Individual trip records for at least one (1) year from the date each trip was provided;

(2) Transportation network company driver records for at least one (1) year from the date a transportation network company driver was active on the transportation network company's website, digital network, or software application; and

(3) Any other records required by this subchapter.

(b) In response to a specific complaint, the Arkansas Public Service Commission or its employees or duly authorized agents may inspect records held by a transportation network company that are needed to investigate or resolve the complaint.

(c)(1) No more than annually as determined by rule of the commission, the commission or its employees or duly authorized agents may in a mutually agreed-upon setting inspect or, if inspection is not feasible, be provided copies of records required to be maintained by a transportation network company under this subchapter that are necessary to ensure public safety.

(2) The inspection of records under subdivision (c)(1) of this section shall be on an audit rather than a comprehensive basis.

(d)(1) Records obtained by the commission under this subchapter pertaining to transportation network company services, transportation network company drivers, or transportation network company drivers' motor vehicles:

(A) Are not subject to disclosure to a third party by the commission; and

(B) Are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) Nothing in this subsection shall be construed as limiting the applicability of any other exemptions under the Freedom of Information Act of 1967, § 25-19-101 et seq., to any other records obtained by the commission under this subchapter.

History. Acts 2015, No. 1050, § 1; 2019, No. 315, § 2453.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (c)(1).

23-13-720. Exclusive authority.

(a)(1) Transportation network companies and transportation network company drivers are governed exclusively by this subchapter and any rules promulgated by the Arkansas Public Service Commission consistent with this subchapter.

(2) This subchapter does not limit the Arkansas Department of Transportation, the Division of Arkansas State Police, the Attorney General, other state agencies, law enforcement, and local governments within this state from enforcing state and federal laws or regulations of general applicability that apply to transportation network companies and transportation network company drivers.

(b)(1) Except as provided in subdivision (b)(2) of this section, a county, municipality, or other local entity shall not tax or license a transportation network company, a transportation network company driver, or a motor vehicle used by a transportation network company driver if the tax or license relates to providing transportation network company services or subjects a transportation network company to any type of rate, entry, operational, or other requirement of the county, municipality, or other local entity.

(2) A municipal airport commission created under the Airport Commission Act, § 14-359-101 et seq., or a regional airport authority created under the Regional Airport Act, § 14-362-101 et seq., may impose tolls and fees as authorized by §§ 14-359-109 and 14-362-109 upon a:

(A) Transportation network company;

(B) Transportation network company driver; or

(C) Motor vehicle used by a transportation network company driver.

History. Acts 2015, No. 1050, § 1; 2017, No. 707, § 232; 2017, No. 954, § 1.

Amendments. The 2017 amendment by No. 707 substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(2).

The 2017 amendment by No. 954 redesignated former (b) as (b)(1), and added (b)(2); and added "Except as provided in subdivision (b)(2) of this section" in (b)(1).

CHAPTER 14

ARKANSAS AIR COMMERCE ACT

23-14-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Air commerce" means the carriage by aircraft of persons or property, or any class or classes thereof, including express, for compensation or hire in intrastate commerce in this state, including the carriage by aircraft of persons or property which move partly by aircraft and partly by other forms of transportation;

(2) "Aircraft" means any contrivance invented, used, or designed for the navigation of or flight in the air;

(3) "Common carrier by aircraft" means any person that holds itself out to the general public, whether directly or indirectly or by a lease or any other arrangement, over regular routes, to engage in air commerce. It shall include any person that, under individual contracts or agreements, engages in regular operation of one (1) or more aircraft for the transportation of passengers or property for compensation;

(4) [Repealed.]

(5) "Overcharges" means charges for transportation service in excess of those applicable thereto under the tariffs lawfully on file with the department;

(6) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof; and

(7) The "services" and "transportation" to which this chapter applies includes all aircraft operated by, for, or in the interest of any common carrier by aircraft irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier and used in air commerce or in the performance of any service in connection therewith.

History. Acts 1945, No. 252, § 1; A.S.A. 1947, § 74-401; Acts 2017, No. 707, § 233.

Amendments. The 2017 amendment repealed (4).

23-14-103. Exemptions.

Nothing in this chapter shall apply to or be construed or held to apply to:

(1) The transportation or handling of United States mail; or

(2) Any common carrier by aircraft which the Arkansas Department of Transportation shall by order determine to be engaged mainly and principally in interstate commerce and whose intrastate business is incidental to its interstate business, if the department finds that its operations are conducted pursuant to a certificate of public convenience and necessity issued by the Federal Aviation Administration or any other governmental agency successor thereto.

History. Acts 1945, No. 252, §§ 2, 8A; A.S.A. 1947, §§ 74-402, 74-409; Acts 2017, No. 707, § 234.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (2).

23-14-104. Penalties.

(a) A person, including any officer, agent, or employee of a corporation, that violates any provision of this chapter or fails to comply with any order, decision, or rule issued by the Arkansas Department of Transportation is guilty of a Class A misdemeanor.

(b) Each day's violation of this chapter or any of the terms or conditions of any such order, decision, or rule shall constitute a separate offense.

History. Acts 1945, No. 252, § 18; A.S.A. 1947, § 74-419; Acts 2005, No. 1994, § 326; 2017, No. 707, § 235; 2019, No. 315, § 2454.

Amendments. The 2017 amendment, in (a), substituted "A person" for "Every person", substituted "Department of Transportation" for "State Highway and Transportation Department", and substituted "is guilty" for "shall be guilty".

The 2019 amendment substituted "rule" for "regulation" in (a) and (b).

23-14-106. Control, supervision, and regulation by department.

A person engaging in air commerce is declared to be subject to control, supervision, and regulation by the Arkansas Department of Transportation.

History. Acts 1945, No. 252, § 3; A.S.A. 1947, § 74-403; Acts 2017, No. 707, § 236.

Amendments. The 2017 amendment substituted "A person" for "Every person" and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-107. Duties and powers of department.

(a) Administration and Enforcement. It shall be the duty of the Arkansas Department of Transportation to administer the provisions of this chapter, and to that end the department shall have authority to make and amend such general or special rules and regulations and to issue

such orders as may be necessary to carry out the provisions of this chapter.

(b) Jurisdiction Over Common Carriers by Aircraft. So far as may be necessary for the purpose of carrying out the provisions of this chapter, the department shall have general supervision and regulation of and jurisdiction and control over common carriers by aircraft.

(c) Complaints and Investigation. The department may investigate, either upon complaint or upon its own initiative, as to whether any common carrier by aircraft has failed to comply with any provision of this chapter or with any order, rule, regulation, or requirement issued or established pursuant thereto and after notice and hearing take appropriate action to compel compliance therewith.

(d) Joint Hearings and Cooperation. The department is authorized to confer with or to hold joint hearings with any authorities of any state or of the United States Government, having jurisdiction with respect to matters involving common carriers by aircraft, in connection with any matter arising under this chapter. The department is also authorized to avail itself of the cooperation, services, records, and facilities of such authorities as fully as may be practicable in the enforcement or administration of any provision of this chapter.

(e) Interstate Rates and Service. When the interstate rates, fares, charges, or classifications of common carriers by aircraft affecting the commerce of this state are, in the opinion of the department, excessive or discriminatory or are levied or laid in violation of the Act of the United States Congress entitled "Civil Aeronautics Act of 1938" [repealed], approved June 23, 1938, and the acts amendatory thereof and supplementary thereto, or are in conflict with the rulings, orders, or regulations of the authorities having jurisdiction thereof, or when those services are, in the opinion of the department, inadequate, unsatisfactory, or discriminatory, the department may apply by petition to the authorities having jurisdiction thereof for relief and may present to those authorities all facts coming to the department's knowledge as to violations of the rulings, orders, or regulations of those authorities, or as to violations of the Civil Aeronautics Act of 1938 [repealed] or acts amendatory thereof or supplementary thereto.

(f) Administrative and Judicial Procedure. The procedure of the department in administering this chapter and of the courts in all matters arising under this chapter shall be the same as established by the Arkansas Motor Carrier Act, 1955, § 23-13-201 et seq., wherever practicable.

History. Acts 1945, No. 252, § 4; 1985, No. 257, § 5; A.S.A. 1947, § 74-404; Acts 2017, No. 707, § 237.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-14-108. Pecuniary interest by employees prohibited.

No member of the Arkansas Department of Transportation or any employee of the department appointed or employed in the administration of this chapter shall in any manner have a pecuniary interest in, own any securities of, or hold any position with any common carrier by aircraft.

History. Acts 1945, No. 252, § 4; A.S.A. 1947, § 74-404; Acts 2017, No. 707, § 238.
Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-109. Certificates required.

No person shall engage in the business of a common carrier by aircraft unless there is in force a certificate issued by the Arkansas Department of Transportation authorizing the person to engage in that business.

History. Acts 1945, No. 252, § 5; A.S.A. 1947, § 74-405; Acts 2017, No. 707, § 239.
Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-110. Certificates — Application — Notice and hearings.

(a) Applications for certificates shall be made in writing to the Arkansas Department of Transportation, shall be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the department shall by rule require.

(b)(1) Upon the filing of an application for a certificate, the department shall give due notice thereof to such persons and by such means as the department may by rule determine.

(2) Any interested person may file with the department a protest or memorandum of opposition to or in support of the issuance of a certificate.

(c) A public hearing shall be held on the application if the applicant or any person having a substantial interest in the proceeding shall so request within such time as the department shall by rule provide.

History. Acts 1945, No. 252, § 6; A.S.A. 1947, § 74-406; Acts 2017, No. 707, § 240; 2019, No. 315, § 2455.
Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).
The 2019 amendment substituted "rule" for "regulation" in (a), (b)(1), and (c).

23-14-111. Temporary certificates.

The Arkansas Department of Transportation may grant temporary certificates without notice or hearing upon such terms and conditions as the department may prescribe, but not for a period exceeding one hundred eighty (180) days.

History. Acts 1945, No. 252, § 7; A.S.A. 1947, § 74-407; Acts 2017, No. 707, § 241.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-112. Certificates — Security for protection of public required.

No certificate shall be issued to a common carrier by aircraft or remain in force unless the carrier complies with such reasonable rules as the Arkansas Department of Transportation shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount and conditioned as the department may require.

History. Acts 1945, No. 252, § 13; A.S.A. 1947, § 74-414; Acts 2017, No. 707, § 242; 2019, No. 315, § 2456.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment deleted "and regulations" following "rules".

23-14-113. Certificates — Evidence of compliance with other laws required.

No certificate shall be issued to any person to operate as a common carrier by aircraft unless the applicant submits evidence satisfactory to the Arkansas Department of Transportation showing that it will comply with the provisions of the laws of the United States and the lawful rules, regulations, and orders thereunder respecting safety of operations, rules, and the provisions of the laws of Arkansas with respect to the right to use such airports, air lanes, and aircraft as may be necessary in order properly to conduct the proposed operations and observe proper standards of safety in the operation or navigation of aircraft.

History. Acts 1945, No. 252, § 7; A.S.A. 1947, § 74-407.

Publisher's Notes. This section is being set out to correct a reference from "Arkansas State Highway and Transportation Department" to "Arkansas Department of Transportation", for consistency with Acts 2017, No. 707.

23-14-114. Issuance of certificates.

The Arkansas Department of Transportation, subject to §§ 23-14-109 and 23-14-111 — 23-14-113, shall issue a certificate authorizing the whole or any part of the operation covered by an application for a certificate if it finds that the applicant is fit, willing, and able to perform the operation properly and to conform to the provisions of this chapter and the rules and requirements of the department hereunder and that the operation and the performance thereof by the applicant is required by the public convenience and necessity.

History. Acts 1945, No. 252, § 7; A.S.A. 1947, § 74-407; Acts 2017, No. 707, § 243; 2019, No. 315, § 2457.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment deleted "regulations" following "rules".

23-14-116. Certificates — Transfer or lease.

Any certificate may be transferred or leased subject to the approval of the Arkansas Department of Transportation and under such reasonable rules as may be prescribed by the department.

History. Acts 1945, No. 252, § 11; A.S.A. 1947, § 74-412; Acts 2017, No. 707, § 244; 2019, No. 315, § 2458.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

The 2019 amendment deleted "and regulations" following "rules".

23-14-117. Certificates — Modification, suspension, or revocation.

The Arkansas Department of Transportation after due notice and hearing may alter, amend, modify, suspend, or revoke any certificate previously granted where the public interest so demands.

History. Acts 1945, No. 252, § 9; A.S.A. 1947, § 74-410; Acts 2017, No. 707, § 245.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-118. Rates and service generally.

Every common carrier by aircraft shall furnish reasonable and adequate service and facilities at just and reasonable rates as shall be determined by the Arkansas Department of Transportation.

History. Acts 1945, No. 252, § 15; A.S.A. 1947, § 74-416; Acts 2017, No. 707, § 246.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-119. Extension of service.

The Arkansas Department of Transportation after due notice and hearing may require any certificate holder to extend its existing service as required by the public convenience and necessity.

History. Acts 1945, No. 252, § 10; A.S.A. 1947, § 74-411; Acts 2017, No. 707, § 247.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-120. Abandonment or discontinuance of service.

No common carrier by aircraft shall abandon or discontinue any route or part thereof for which a certificate has been issued by the Arkansas

Department of Transportation, unless upon the application of the common carrier the department finds after notice and opportunity for hearing the abandonment or discontinuance to be in the public interest.

History. Acts 1945, No. 252, § 12; A.S.A. 1947, § 74-413; Acts 2017, No. 707, § 248.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-121. Tariffs.

(a) FILING. A common carrier by aircraft shall file with the Arkansas Department of Transportation, print, and make available to the public tariffs showing all rates, fares, and charges for air commerce between points served by it, and between points served by it and points served by any other common carrier by aircraft when through-air commerce service and rates have been established, and all classifications, rules, regulations, practices, and services in connection with such commerce. The tariffs shall be filed in such manner and form as shall be prescribed by the department.

(b) OBSERVANCE. No common carrier by aircraft shall charge, demand, collect, or receive a greater or lesser or different compensation for air commerce, or for any service in connection therewith, than the rates, fares, and charges specified in its currently effective tariffs.

History. Acts 1945, No. 252, § 14; A.S.A. 1947, § 74-415; Acts 2017, No. 707, § 249.

Amendments. The 2017 amendment, in (a), substituted "A common carrier" for "Every common carrier", and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-122. Free or reduced-rate transportation.

(a) Nothing in this chapter shall prohibit common carriers by aircraft, under such terms and conditions as the Arkansas Department of Transportation may prescribe, from issuing or interchanging tickets or passes for free or reduced-rate transportation to:

(1) Their directors, officers, and employees and their immediate families;

(2) Witnesses and attorneys attending any legal investigation in which the carrier is interested;

(3) Persons injured in aircraft accidents and physicians and nurses attending such persons; and

(4) Any person or property with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

(b) The members of the department and its employees when in the performance of their official duties under this chapter shall have the right to pass free of charge on all common carriers by aircraft as defined in this chapter.

(c) No such carrier shall provide free or reduced-rate transportation to any other persons or under any other circumstances.

History. Acts 1945, No. 252, § 14; A.S.A. 1947, § 74-415; Acts 2017, No. 707, § 250.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language of (a).

23-14-123. Change in tariff, charge, rule, regulation, etc. — Approval by department.

(a)(1) A change shall not be made in any rate, fare, or charge, or any classification, rule, regulation, or practice affecting the rate, fare, or charge, or the value of the service thereunder, specified in any effective tariff of any common carrier by aircraft, except upon approval of the Arkansas Department of Transportation and the rules and regulations prescribed by it.

(2) If the proposed change is not acted upon by the department within thirty (30) days from the filing date thereof, the change shall become effective at the expiration of the thirty-day period.

(b) The department is empowered to suspend any proposed new rate upon notice to the carrier for a period not exceeding one hundred eighty (180) days pending investigation by the department as to the reasonableness of such a proposed rate. However, this subsection shall not apply to any initial tariff filed by the carrier.

(c) At any hearing involving any change in any tariff, classification, rule, regulation, practice, or service of a common carrier by aircraft, the burden of proof to show that the changed tariff, classification, rule, regulation, practice, or service is just and reasonable shall be upon the carrier.

History. Acts 1945, No. 252, §§ 14, 15; A.S.A. 1947, §§ 74-415, 74-416; Acts 2017, No. 707, § 251.

Amendments. The 2017 amendment, in (a)(1), substituted "A change shall not" for "No change shall" and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-14-124. Regulation of securities and liens — Liability of state.

(a) The Arkansas Department of Transportation is empowered to supervise, regulate, restrict, and control the issuance of stock, stock certificates, bonds, notes, and other evidences of indebtedness by common carriers by aircraft incorporated under the laws of Arkansas and the creation of liens on property in this state by carriers incorporated under the laws of other states.

(b) All securities issued without approval of the department as provided for in this section shall be void.

(c) This section shall not apply to the issuance of any securities payable at periods of not more than twelve (12) months from the date thereof.

(d) No provision in this chapter and no deed or act done or performed under or pursuant to this chapter shall be construed to obligate the

State of Arkansas to pay or guarantee, in any manner whatsoever, any securities issued under the provisions of this chapter.

History. Acts 1945, No. 252, § 17; A.S.A. 1947, § 74-418; Acts 2017, No. 707, § 252.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-14-125. Accounts, records, and reports.

(a) The Arkansas Department of Transportation is empowered to require annual and other periodic reports from any common carrier by aircraft covering any or all operations or business.

(b) The department may also require any common carrier by aircraft to file with it a true copy of each or any contract, agreement, understanding, or arrangement between the carrier and any other carrier or person in relation to any traffic affected by the provisions of this chapter.

(c) The department shall prescribe the forms of any and all accounts, records, and memoranda to be kept by common carriers by aircraft, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money.

History. Acts 1945, No. 252, § 16; A.S.A. 1947, § 74-417; Acts 2017, No. 707, § 253.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-14-126. Access to and examination of property and records.

(a) The Arkansas Department of Transportation shall at all times have access to all lands, buildings, and equipment of any common carrier by aircraft and to all accounts, records, and memoranda, including all documents, papers, and correspondence, now or hereafter existing and kept or required to be kept by such carriers.

(b) The department may employ special agents or auditors, who shall have authority under the orders of the department to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda.

History. Acts 1945, No. 252, § 16; A.S.A. 1947, § 74-417; Acts 2017, No. 707, § 254.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-14-128. Fees.

(a) Application Fees. The following application fees shall be paid to the Arkansas Department of Transportation at the time of filing an application:

Application for certificate $25.00

Application for transfer of certificate 25.00
Application for duplicate certificate 5.00
Filing rate schedule 2.50
Certified copies of all documents ..... 15¢ for each folio
Uncertified copies of all documents ..... 10¢ for each folio
Filing annual reports 5.00

(b) Disposition of Fees Collected. All fees or sums collected by the department under the provisions of this chapter shall be deposited with the Treasurer of State and credited to the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 1945, No. 252, § 19; A.S.A. 1947, § 74-420; Acts 2017, No. 707, § 255.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language of (a).

CHAPTER 15

PIPELINE COMPANIES

SUBCHAPTER.
1. General Provisions.
2. Arkansas Natural Gas Pipeline Safety Act of 1971.

Subchapter 1 — General Provisions

SECTION.

23-15-105. Pipeline companies authorized to transport ammonia and other components of fertilizer.

(a) Pipeline companies operating in this state as common carriers and companies operating pipelines in this state for conveying natural or artificial gas for public utility service may transport by pipeline ammonia and other substances and materials composing commercial fertilizer, or used in manufacturing commercial fertilizer, when specifically authorized to so do by the Arkansas Department of Transportation.

(b)(1) Applications for authority to operate under subsection (a) of this section shall be heard and determined by the department.

(2) Appeals from the department's orders in such matters shall be granted pursuant to § 23-2-211.

(c) The department shall make such reasonable rules as may be necessary to administer this section.

(d) All companies authorized by the department to operate under subsection (a) of this section are given the right of eminent domain. The procedure to be followed in the exercise of this right shall be the same as prescribed in § 18-15-1201 et seq. relating to railroad companies, telegraph companies, and telephone companies.

History. Acts 1967, No. 170, §§ 1-4; A.S.A. 1947, §§ 73-1904 — 73-1907; Acts 2017, No. 707, § 256; 2019, No. 315, § 2459.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

The 2019 amendment deleted "and regulations" following "rules" in (c).

Subchapter 2 — Arkansas Natural Gas Pipeline Safety Act of 1971

23-15-208. Inspection and maintenance plans.

(a) Each person who engages in the transportation of gas or who owns or operates pipeline facilities not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act shall file with the Arkansas Public Service Commission a plan for inspection and maintenance of each pipeline facility owned or operated by the person and any changes in the plan in accordance with rules prescribed by the Arkansas Public Service Commission.

(b) The Arkansas Public Service Commission by rule may also require persons who engage in the transportation of gas or who own or operate pipeline facilities subject to the provisions of this subchapter to file such plans for approval.

(c) If at any time the Arkansas Public Service Commission finds that the plan is inadequate to achieve safe operation, the Arkansas Public Service Commission after notice and opportunity for a hearing shall require the plan to be revised.

(d) The plan required by the Arkansas Public Service Commission shall be practicable and designed to meet the need for pipeline safety.

(e) In determining the adequacy of the plan, the Arkansas Public Service Commission shall consider:

(1) Relevant available pipeline safety data;

(2) Whether the plan is appropriate for the particular type of pipeline transportation;

(3) The reasonableness of the plan; and

(4) The extent to which the plan will contribute to public safety.

History. Acts 1971, No. 285, § 4; A.S.A. 1947, § 73-1911; Acts 2019, No. 315, § 2460.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a) and made a similar change in (b).

23-15-211. Civil penalty — Compromise — Proceedings.

(a) A person who violates a provision of § 23-15-209 or a rule issued under this subchapter is subject to a civil penalty not to exceed:

(1) Two hundred thousand dollars ($200,000) for each day that the violation persists; and

(2) Two million dollars ($2,000,000) for any related series of violations.

(b) Any such civil penalty may be compromised by the Arkansas Public Service Commission.

(c) In determining the amount of the penalty or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.

(d) Proceedings under this section shall be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) Any penalty imposed under this section, if not promptly paid to the commission, shall be recovered with interest thereon from the date of the order in a civil action brought by the commission.

(f) Any civil penalty collected and imposed under this section shall be paid to the secretary of the Arkansas Public Service Commission.

History. Acts 1971, No. 285, §§ 6, 8; 1975, No. 877, § 2; A.S.A. 1947, §§ 73-1913, 73-1915; Acts 1991, No. 793, § 4; 1995, No. 713, § 1; 2005, No. 539, § 1; 2013, No. 1343, § 2; 2019, No. 315, § 2461.

Amendments. The 2019 amendment substituted "rule" for "regulation" in the introductory language of (a).

CHAPTER 16

MISCELLANEOUS PROVISIONS RELATING TO CARRIERS

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

23-16-101. Definitions.

As used in this subchapter:

(1)(A) "Other carriers" means all persons, firms, and corporations, other than rail carriers as defined in this section, which were subject to regulation by the former Arkansas Transportation Commission before the enactment of Acts 1945, No. 40, together with all persons, firms, and corporations that perform similar services in Arkansas.

(B) "Other carriers" includes common carriers by aircraft as defined under the Arkansas Air Commerce Act, § 23-14-101 et seq.; and

(2) "Rail carrier" means all persons, firms, and corporations engaged in the business of common carrier of freight and passengers by rail in Arkansas and which are subject to regulation by the Arkansas Department of Transportation.

History. Acts 1949, No. 262, § 1; A.S.A. 1947, § 73-268; Acts 2017, No. 707, § 257; 2019, No. 391, § 2.

Amendments. The 2017 amendment repealed (1).

The 2019 amendment deleted "unless the context otherwise requires" following "subchapter" in the introductory language; deleted former (1), which was previously repealed; redesignated former (2) and (3) as (1) and (2); substituted "former Arkansas Transportation Commission before" for "department prior to" in (1)(A); substituted "includes" for "shall also include" in (1)(B); substituted "Arkansas Department of Transportation" for "department" in (2); and made a stylistic change.

23-16-103. Annual certified statement of gross revenue.

(a)(1) Annually, during the month of March, every rail carrier and other carrier subject to regulation by the Arkansas Department of Transportation under the laws of Arkansas shall prepare and transmit to the department a certified statement of the gross revenues from its operations in Arkansas for the preceding calendar year ending December 31.

(2) No deduction shall be made from such gross revenues on account of any payments, expenses, or uncollectible accounts, except refunds occasioned by errors or overcharges.

(b) Upon receipt of the certified statement, the department shall determine the total gross revenues in Arkansas of each and all of the rail carriers and the total gross revenues in Arkansas of each and all of the other carriers.

History. Acts 1949, No. 262, § 3; A.S.A. 1947, § 73-270; Acts 2017, No. 707, § 258.

Amendments. The 2017 amendment, in (a)(1), deleted "which is" preceding "subject to" and substituted "Department of Transportation" for "State Highway and Transportation Department".

23-16-104. Annual fee collected from carriers.

(a) There is levied and charged and there shall be collected annually from each rail carrier subject to regulation by the Arkansas Department of Transportation under the laws of Arkansas a fee in an amount equivalent to that proportion of the total rail carrier cost that the gross revenues in Arkansas of each of the rail carriers bear to the total gross revenues in Arkansas of all of the rail carriers. However, the fee to be collected annually from each of the rail carriers shall not exceed in any year an amount exceeding two-fifths of one percent (⅖ of 1%) of the gross revenues in Arkansas of each respective rail carrier.

(b) There is levied and charged and there shall be collected annually from each other carrier which is subject to regulation by the department under the laws of Arkansas a fee in an amount which shall be equivalent to that proportion of the total other carrier costs that the gross revenues in Arkansas of each of the other carriers bear to the total

gross revenues in Arkansas of all of the other carriers. However, the fee to be collected annually from each of the other carriers shall not exceed in any year an amount exceeding two-fifths of one percent (⅖ of 1%) of the gross revenues in Arkansas of each respective other carrier.

History. Acts 1949, No. 262, §§ 4, 5; A.S.A. 1947, §§ 73-271, 73-272; Acts 2017, No. 707, § 259.

Amendments. The 2017 amendment, in the first sentence of (a), deleted "which is" preceding "subject to", substituted "Department of Transportation" for "State Highway and Transportation Department", and deleted "which shall be" following "an amount".

23-16-105. Statement of fees due from rail carriers — Payment — Delinquent penalty.

(a) After determining the amount of the fee due to be paid by each of the rail carriers, the Arkansas Department of Transportation, annually on or before August 15, shall prepare and transmit to each of the rail carriers a statement of the fees due for rail carrier costs during the preceding fiscal year.

(b) Thereafter, on or before August 31 of each year, each of the rail carriers shall pay to the department all fees shown to be due by the statements.

(c) On receipt of the fees and charges provided for in this subchapter, the department shall deposit the fees and charges with the Treasurer of State, and the amount so received by the Treasurer of State shall be classified by the Treasurer of State as special revenues and transferred, by the Treasurer of State on the last business day of the month such amounts are deposited, to the State Highway and Transportation Department Fund, there, notwithstanding the provisions of any law to the contrary, to be utilized by the department for the purposes of administering the laws of this state which the State Highway Commission and the department are responsible for administering with regard to rail carriers and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system.

(d) In the event any rail carrier fails or refuses to pay the fees provided for in this subchapter on or before August 31 of each year, the department shall add to such fee a penalty of twenty-five percent (25%) thereof and certify the amount of the delinquent fee and penalty to the Attorney General for collection.

History. Acts 1949, No. 262, § 6; A.S.A. 1947, § 73-273; Acts 1993, No. 725, § 1; 2017, No. 707, § 260.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

23-16-106. Record of cost of operation kept.

(a) The Arkansas Department of Transportation shall designate one (1) of its officers or employees who is familiar with cost accounting methods to keep a separate and accurate record of that part of the cost

of operation and maintenance of the department having to do with matters relating to the regulation of:

(1) Rail carriers, which costs are hereinafter referred to as "rail carrier costs"; and

(2) Other carriers, which costs are hereinafter referred to as "other carrier costs".

(b) In a similar manner to that set forth in subsection (a) of this section, an officer or employee of the Arkansas Public Service Commission shall keep an accurate record of that part of the cost of operation and maintenance of the commission having to do with matters relating to:

(1) Public utilities, other than rail carriers, and other carriers which are subject to regulation by the commission; and

(2) The Tax Division of the Arkansas Public Service Commission.

History. Acts 1949, No. 262, § 2; A.S.A. 1947, § 73-269; Acts 2017, No. 707, § 261.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a).

Subchapter 3 — Uninsured Motorist Liability Insurance

23-16-301. Definitions.

RESEARCH REFERENCES

ALR. Applicability of Uninsured or Underinsured Motorist Statutes to Self-Insurers, 32 A.L.R.7th Art. 3 (2018).

Subchapter 4 — Arkansas Lifeline Individual Verification Effort Corporation Act

SECTION.

23-16-407. Powers and duties of corporation.

(a)(1) The Arkansas Lifeline Individual Verification Effort Corporation shall provide services to verify eligibility under the Lifeline Assistance Program for individuals for whom other governmental entities do not verify the data. If another governmental entity provides verification, the corporation shall not duplicate the verification.

(2) The corporation may provide services to verify eligibility under the Link Up America program for individuals for whom other governmental entities do not verify the data. If another governmental entity provides verification, the corporation shall not duplicate the verification.

(b) The corporation shall:

(1) Have perpetual succession as a body politic and corporate, adopt bylaws for the regulation of the affairs and the conduct of its business,

and prescribe rules and policies in connection with the performance of its functions and duties;

(2) Adopt an official seal and alter it at pleasure;

(3) Sue and be sued in its own name and plead and be impleaded;

(4) Make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this subchapter, including contracts with persons, firms, corporations, and others;

(5) Purchase insurance; and

(6) Do all other acts and things necessary, convenient, or desirable to carry out the purposes of this subchapter and to exercise the powers granted to it by this subchapter.

History. Acts 2005, No. 2289, § 1; 2019, No. 315, § 2462.

Amendments. The 2019 amendment deleted "regulations" following "rules" in (b)(1).

Subchapter 5 — Safe Transportation of Railroad Employees by Contract Carriers Act

23-16-505. Driver testing.

(a)(1) Before a driver performs any duties for a contract carrier, the driver shall undergo testing for alcohol and controlled substances as provided under 49 C.F.R. § 40 and 49 C.F.R. § 382, as in effect on January 1, 2009.

(2) A driver is qualified to drive for a contract carrier if:

(A) The alcohol test result under subdivision (a)(1) of this section indicates an alcohol concentration of zero (0); and

(B) The controlled substances test result from the medical review officer as defined under 49 C.F.R. § 40.3, as in effect on January 1, 2009, indicates a verified negative test result.

(3) A driver is disqualified from driving for a contract carrier if:

(A) The alcohol test result and the controlled substances test result are not in compliance with subdivision (a)(2) of this section;

(B) The driver refuses to provide a specimen for an alcohol test result or the controlled substances test result, or both; or

(C) The driver submits an adulterated specimen, a diluted positive specimen, or a substituted specimen on an alcohol test result or the controlled substances test result that is performed.

(b)(1) As soon as practicable after an accident involving a motor vehicle owned or operated by a contract carrier, the contract carrier shall test each surviving driver for alcohol and controlled substances if:

(A) The accident involved the loss of human life; or

(B) The driver received a citation for a moving traffic violation arising from the accident and the accident involved:

(i) Bodily injury to a person who immediately received medical treatment after the accident; or

(ii) Disabling damage that required the motor vehicle to be towed from the accident scene by one (1) or more motor vehicles as a result of the accident.

(2) If alcohol testing and controlled substances testing cannot be completed as soon as possible but no later than thirty-two (32) hours after the accident, the records shall be submitted to the Arkansas Highway Police Division of the Arkansas Department of Transportation.

(c)(1) A common carrier or the employer of a driver of a common carrier shall maintain records of the alcohol testing and controlled substances testing of drivers for five (5) years.

(2) The records shall be maintained in a secure location.

History. Acts 2009, No. 243, § 1; 2017, No. 707, § 262.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (b)(2).

23-16-508. Access to facilities and records.

A contract carrier shall allow an employee of the Arkansas Highway Police Division of the Arkansas Department of Transportation or its designee access to:

(1) A facility to determine compliance with this subchapter; and

(2) Records or information related to an accident investigation under this subchapter.

History. Acts 2009, No. 243, § 1; 2017, No. 707, § 263.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language.

23-16-510. Penalties.

(a)(1) A person who knowingly violates a provision of this subchapter is liable to the state for a civil penalty not to exceed one thousand dollars ($1,000) for each violation.

(2) Each day that a violation continues is a separate offense.

(b) The Arkansas Highway Police Division of the Arkansas Department of Transportation shall assess penalties for violations under this subchapter by written notice to the violator.

(c) To determine the amount of the penalty, the Arkansas Department of Transportation or its designee shall evaluate:

(1) The nature, circumstances, extent, and gravity of the violation;

(2) The degree of culpability, history of prior offenses, ability to pay, and effect on the ability to continue to do business of the person found to have committed a violation; and

(3) Other circumstances as justice may require.

History. Acts 2009, No. 243, § 1; 2017, No. 707, § 264.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (b) and (c).

CHAPTER 17

TELEPHONE AND TELEGRAPH COMPANIES

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2019, No. 1074, § 3: Apr. 16, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the practice of illegal robocalls from telemarketers and from others seeking to perpetrate scams on the public to mislead and defraud the public is growing; that addressing misleading and fraudulent spoofing of telephone calls will protect the lives, health, and welfare of the state's residents; and that this act is immediately necessary because the Arkansas Public Service Commission should be immediately authorized to adopt and implement appropriate rules as provided in this act. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

23-17-113. Telephone service to be supplied without discrimination — Complaint to commission.

(a)(1) Every telephone company doing business in this state and engaged in a general telephone business shall supply all applicants for telephone connection and facilities without discrimination or partiality, within ten (10) days after written demand therefor, if the applicants comply or offer to comply with the reasonable rules of the company.

(2) No telephone company shall impose any condition or restriction upon any applicant that is not imposed impartially upon all persons or companies in similar situations. Nor shall the company discriminate against any individual or company engaged in lawful business by

requiring as a condition for furnishing the facilities that they shall not be used in the business of the applicant or otherwise.

(b) Upon failure of any telephone company to comply with the written demand for telephone connection and facilities, the applicant may file a complaint with the Arkansas Public Service Commission under the provisions of § 23-3-119. The commission may make such temporary and final orders relative to the furnishing of such connection and facilities as the facts may justify.

History. Acts 1885, No. 107, § 11, p. 176; 1913, No. 95, § 1, p. 346; C. & M. Dig., § 10251; Pope's Dig., § 14261; Acts 1955, No. 120, § 1; A.S.A. 1947, § 73-1816; Acts 2019, No. 315, § 2463.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(1).

23-17-120. Establishment of calling plans.

(a)(1) The Arkansas Public Service Commission by rule shall establish calling plans in telephone exchanges in the state.

(2) The commission shall determine the size of exchanges that will be eligible for the calling plan.

(b)(1) The commission may establish end-user charges for the plan in an amount not to exceed two dollars and fifty cents ($2.50) per month per access line to be applied in the affected exchanges. In addition the commission may establish usage-based charges or other end-user charges as appropriate to fund the plan.

(2) The plan shall be funded by customer charges under subdivision (b)(1) of this section and by the Arkansas Calling Plan Fund established by § 23-17-404(e).

(c) The plan may vary among telephone exchanges based on factors determined by the commission.

(d) In establishing the calling plan, the commission shall consider basic local exchange rates, calling scopes, the ability of customers to call the county seat, access to industry and business, the cost of providing the calling plan, and the availability of funding from the Arkansas Calling Plan Fund.

(e) The plan provided to different telephone exchanges may vary in minutes in the plan and the cost to customers for the plan and may be either mandatory or optional plans.

(f) Any mandatory plan shall be subject to approval through a balloting process by the customers of the exchanges that would be subject to the monthly end-user charge associated with the proposed plan. A minimum of fifty-one percent (51%) of the ballots returned must be in favor of the proposed calling plan in order for the proposed calling plan to be implemented.

(g)(1) Incumbent local exchange carriers shall not be entitled to Arkansas Universal Service Fund [superseded] recovery for lost toll revenues associated with the implementation of these calling plans.

(2) In establishing the plans, the commission is required to ensure that all costs to incumbent local exchange carriers of implementing

such plans, including, but not limited to, lost toll and access revenues, network and equipment costs, and costs incurred to terminate associated plan traffic are fully compensated by the combination of end-user charges and funds provided to each incumbent local exchange carrier from the Arkansas Calling Plan Fund.

(3) Lost toll revenues shall be determined by a two-month study of actual toll usage and revenues for traffic on the proposed route.

History. Acts 2001, No. 1769, § 1; 2013, No. 442, § 29; 2019, No. 315, § 2464.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a)(1).

23-17-122. Annual certification — Definition.

(a) As used in this section, "provider" means an entity that provides a telecommunications service, a Voice over Internet Protocol, commonly known as "VoIP", service, a commercial radio service, or a similar service.

(b) Beginning July 1, 2019, and annually thereafter, a provider shall file with the Arkansas Public Service Commission documentation demonstrating that the provider has implemented current and applicable technologies to identify and block telecommunications that violate § 4-88-107(a)(11), § 4-88-108(a), § 4-99-108(c), or § 4-99-302(b), as applicable, taking into consideration applicable state and federals laws, federal regulations, and costs.

(c)(1) The commission shall promulgate rules necessary to implement this section.

(2)(A) When adopting the initial rules to implement this section, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(i) On or before July 1, 2020; or

(ii) If approval under § 10-3-309 has not occurred by July 1, 2020, as soon as practicable after approval under § 10-3-309.

(B) The commission shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of July 1, 2020, so that the Legislative Council may consider the rule for approval before July 1, 2020.

(d) The commission shall have exclusive jurisdiction to hear and determine all complaints regarding a provider's compliance with this section.

(e) A provider filing documentation under subsection (b) of this section shall be deemed to be in compliance with this section until the provider is subject to a final order issued by the commission finding the provider has failed to implement current and applicable technologies according to subsection (b) of this section.

History. Acts 2019, No. 677, § 9; 2019, No. 1074, § 2.

A.C.R.C. Notes. Acts 2019, No. 677, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The citizens of this state are being negatively affected by illegal robocalls

from telemarketers and from others seeking to perpetrate scams on them;

"(2) While these illegal robocalls are frustrating for most, the robocalls are costly and dangerous for far too many Arkansans;

"(3) An alarming number of illegal robocalls originate from scammers using automatic telephone dialing systems to send out thousands of phone calls per minute with fictitious or misleading names or telephone numbers displaying on unsuspecting consumers' telephone caller identification service;

"(4) These scammers are engaging in insidious schemes and targeting seniors and other vulnerable groups by soliciting personal information such as credit or debit card information and Social security numbers;

"(5) Displaying fictitious or misleading names or telephone numbers, or "spoofing", is the predominant means by which a robocaller protects their identities and entices consumers to answer the telephone; and

"(6) Spoofing is the gateway for illegal robocalls and scams.

"(b) It is the intent of the General Assembly:

"(1) To protect the citizens of this state from being spoofed by receiving illegal robocalls from telemarketers and from others seeking to perpetrate scams on unsuspecting or vulnerable citizens;

"(2) To provide the citizens of this state who use a caller identification service with accurate information about the identities and locations of callers;

"(3) To encourage telecommunications providers to swiftly implement technologies that will allow telecommunications providers to identify and stop illegal calling practices; and

"(4) That this act be construed as broadly as possible to ensure that the citizens of this state are protected from the negative impact of illegal robocalls and to ensure that scammers and complicit telecommunications providers are held criminally accountable".

Amendments. The 2019 amendment added (a) and (c) through (e); designated the former section as (b); and, in (b), substituted "Beginning July 1, 2019, and annually thereafter, a provider shall file with" for "No later than June 30 annually, a telecommunications provider may seek a determination by", inserted "documentation demonstrating" and deleted "telecommunications" preceding the second occurrence of "provider".

Subchapter 3 — Universal Telephone Service Act

23-17-304. Universal Telephone Service Fund created — Contents.

(a) There is created the Universal Telephone Service Fund to be established by assessing upon all interexchange carriers operating in this state a charge on interexchange communication services based on usage, revenue, volume, or other appropriate factors.

(b)(1) The amount of the charge shall be determined by the Arkansas Public Service Commission after notice and hearing.

(2) The Arkansas Public Service Commission shall coordinate the development of the structure and level of the charge, as well as the support to be provided through the Universal Telephone Service Fund, with the interstate Universal Service Fund or similar arrangement established by the Federal Communications Commission so that the Universal Telephone Service Fund is not administered inconsistently

with the Federal Communications Commission's Universal Service Fund or similar arrangements.

(c) The amounts shall be remitted to the Arkansas Public Service Commission under such reasonable rules as the Arkansas Public Service Commission may prescribe and shall be deposited by the Arkansas Public Service Commission into an account, separate from all other funds, designated as the "Universal Telephone Service Fund".

History. Acts 1983, No. 483, § 4; A.S.A. 1947, § 73-2604; Acts 2019, No. 315, § 2465.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c).

23-17-306. Allocation of fund.

(a) The Arkansas Public Service Commission shall allocate the Universal Telephone Service Fund among all local exchange carriers operating in Arkansas in such a manner as to moderate the disruptive effects of changes in methods of pricing of telephone services and to hold prices of local exchange telephone service to levels which will ensure, insofar as it is feasible to do so, that a maximum number of subscribers may maintain affordable local telephone service.

(b) The allocation shall be made after a hearing at which all local exchange carriers and other interested parties may be heard and may be modified or adjusted by the commission, after hearing, at any time circumstances indicate a need for such modification.

(c) The commission by rule may establish standard guidelines for allocation methodology.

(d) The entire fund, after reasonable costs of administration are applied, shall be allocated among the local exchange carriers.

History. Acts 1983, No. 483, § 5; A.S.A. 1947, § 73-2605; Acts 2019, No. 315, § 2466.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (c).

Subchapter 4 — Telecommunications Regulatory Reform Act of 2013

Effective Dates. Acts 2017, No. 419, § 2: July 1, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that federal law requires a change in the Telecommunications Regulatory Reform Act of 2013; that the regulation of eligible telecommunications carriers under state law must be updated in order to comply with federal law; and that this act is necessary to avoid a potential conflict between state and federal law concerning regulation of eligible telecommunications carriers. Therefore, an emergency is de-

clared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2017".

Acts 2019, No. 198, § 4: Feb. 26, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that reliable high speed broadband service is essential to a community's success; that reliable high speed broadband is not available in many rural areas of the state; and that this act is immediately necessary to expand the benefits of reliable high speed broadband to all residents of the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-17-403. Definitions.

As used in this subchapter:

(1) "Access line" means a communications facility extending from a customer's premises to a serving central office comprising a subscriber line and, if necessary, a trunk facility;

(2) "Access minute", unless otherwise defined by the Arkansas Public Service Commission, means the measurement of usage to provision communications between:

(A) A customer premises and an interexchange carrier's point of interconnection with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination and termination of interexchange long distance traffic; and

(B) A customer premises and another LEC's point of termination with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination and termination of interexchange long distance traffic;

(3)(A) "Affiliate" means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or that is under common ownership or control with another entity.

(B) For the purpose of this definition, "owns or controls" means holding at least a majority of the outstanding voting power;

(4) "AICCLP member" means an ILEC that is eligible to be a member of the AICCLP after December 31, 2003, and that has not terminated its membership under § 23-17-416(f)(2);

(5)(A) "AICCLP rate adjustment" means the local service rate adjustment, determined by the AICCLP administrator, that may be charged by each AICCLP member to its customers to recover a portion of its carrier common line net revenue requirement.

(B)(i) For any AICCLP member that is eligible to be a member of the AICCLP as of January 1, 2004, for whom the sum of the residential local exchange rate and extended area service additive is higher than the average residential local exchange rate for all members eligible to be members as of January 1, 2004, the monthly AICCLP rate adjustment shall be the lesser of fifty cents (50¢) or an amount that yields the total monthly carrier common line net revenue requirement per access line.

(ii) For any AICCLP member that is eligible to be a member of the AICCLP as of January 1, 2004, for whom the sum of its residential local exchange rate and extended area service additive is lower than the average residential local exchange rate for all members eligible to be members as of January 1, 2004, the monthly AICCLP rate adjustment shall be the lesser of seventy-five cents (75¢) or an amount that yields the total monthly carrier common line net revenue requirement per access line.

(iii) If the amount due to an AICCLP member under § 23-17-416(h) is limited due to the annual one million three hundred thousand dollar ($1,300,000) cap under § 23-17-416(e)(8)(B)(i) and if the member's AICCLP rate adjustment and the amount due to the AICCLP member under § 23-17-416(h) do not allow the member to recover its common line net revenue requirement, the member may charge an additional amount for local rates to recover its carrier common line net revenue requirement;

(6) "Annual unseparated unlimited loop requirement" means a financial algorithm calculated annually by NECA and USAC that includes all the loop investment, expenses, and other loop costs of providing service within the study area of an eligible telecommunications carrier;

(7) "Arkansas Intrastate Carrier Common Line Pool" or "AICCLP" means the unincorporated organization of the providers of Arkansas telecommunications services, authorized by the commission and by state law, whose purpose is to manage billing, collection, and distribution of the carrier common line revenue requirements;

(8) "Arkansas intrastate telecommunications services revenues" means the revenues of all carriers that are not ILECs, that are derived from end-users for telecommunications within Arkansas and telecommunications services provided within Arkansas, including messages that are switched or otherwise temporarily transported outside of Arkansas in the process of delivering the message within Arkansas;

(9) "Average schedule company" means a company that uses a proxy established from a formula using the average costs of a group of

companies rather than using the company's specific costs in reporting to NECA;

(10) "Basic local exchange service" means the service provided to the premises of residential or business customers composed of the following:

(A) Voice-grade access to the public switched network, with ability to place and receive calls;

(B) Touch-tone service availability;

(C) Flat-rate residential local service and business local service;

(D) Access to emergency services (911/E911) where provided by local authorities;

(E) Access to basic operator services;

(F) A standard white-page directory listing;

(G) Access to basic local directory assistance;

(H) Access to long distance toll service providers; and

(I) The minimum service quality as established and required by the commission on February 4, 1997;

(11) "Carrier common line net revenue requirement" means the monthly variable funding requirement of an AICCLP member, which is calculated as the sum of the member's intrastate carrier common line revenue requirement, the member's terminating carrier common line expense based on its per-minute terminations on other ILECs, the member's Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense, and the member's share of AICCLP administrative fees, minus the sum of the carrier common line revenue, based on per-minute terminations received from other ILECs, carrier common line revenue received from underlying carriers for originating and terminating access minutes, the AICCLP rate adjustment, and the fixed ILEC retail billed minutes of use expense based on the data development period determination of average monthly retail billed minutes of use expense of the member;

(12) "Commercial mobile service" means cellular, personal communications systems and any service regulated pursuant to Part 20 of the rules and regulations of the Federal Communications Commission, 47 C.F.R. Part 20, or any successor provisions;

(13) "Commission" means the Arkansas Public Service Commission;

(14) "Competing local exchange carrier" or "CLEC" means a local exchange carrier that is not an incumbent local exchange carrier;

(15) "Data development period" means the time period in which the AICCLP members and initial exiting ILECs shall obtain relevant data necessary to:

(A) Calculate the fixed amounts of retail billed minutes-of-use expense and to test and obtain reliability of the billing and reporting systems to be used by the AICCLP; and

(B) Calculate the fixed carrier common line revenue shortfall for members required to exit the pool on December 31, 2003;

(16) "Electing company" means a local exchange carrier that elects to be regulated pursuant to §§ 23-17-406 — 23-17-408;

(17) "Eligible telecommunications carrier" or "ETC" means the local exchange carrier determined in accordance with § 23-17-405;

(18) "Embedded investment" means the amount of investment in a telephone plant that has already been made by an incumbent local exchange carrier as of February 4, 1997;

(19) "Exiting ILEC" means an ILEC that terminates its membership in the AICCLP under § 23-17-416(f);

(20) "Extended area service" means an unlimited local service provided to the customer at a fixed rate that:

(A) Is mandated by the commission at the election of customers within a local exchange area;

(B) Provides one-way or two-way calling between basic local exchange service customers within the local exchange area of one (1) or more incumbent local exchange carriers; and

(C) Is not included as part of basic local exchange service;

(21) "Facilities" means any of the physical elements of the telephone plant that are needed to provide or support telecommunications services, including switching systems, cables, fiber optic and microwave radio transmission systems, measuring equipment, billing equipment, operating systems, billing systems, ordering systems, and all other equipment and systems that a telecommunications service provider uses to provide or support telecommunications services;

(22) "FCC" means the Federal Communications Commission;

(23) "Federal act" means the Communications Act of 1934, as amended;

(24) "Fixed carrier common line revenue shortfall" means the total annual funding requirement of an ILEC that must exit the AICCLP under § 23-17-416(f)(1), which is calculated as the sum of an ILEC's intrastate carrier common line revenue requirement, the ILEC's terminating carrier common line expense based on its per-minute terminations on other ILECs, and the ILEC Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense, minus the sum of the carrier common line revenue, based on per-minute terminations received from other ILECs, carrier common line revenue received from underlying carriers for originating and terminating access minutes, and the fixed ILEC retail billed minutes of use expense based on the data development period determination of average monthly retail billed minutes of use expense of the ILEC;

(25) "Fixed ILEC retail billed minutes of use expense" means the fixed determination of the average retail billed minutes-of-use expense paid to the AICCLP by the ILEC based upon the ILEC's three-month average retail billed minutes-of-use expense during its applicable data development period, as determined under § 23-17-416(h), exclusive of any retail billed minutes-of-use expense associated with retail billed minutes of uses provided by a toll reseller of an underlying carrier that is an ILEC;

(26) "Government entity" includes without limitation all Arkansas state agencies, commissions, boards, authorities, and all Arkansas

public educational entities, including school districts, and political subdivisions, including incorporated and unincorporated cities and towns and all institutions, agencies or instrumentalities of municipalities, and county governments;

(27) "ILEC Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense" means the charge assessed against an ILEC in proportion to the AICCLP credits that were eliminated by former § 23-17-404(e)(4)(D)(iv)*(b)*;

(28) "ILEC intrastate carrier common line revenue requirement" means the fixed annual payment that each ILEC was entitled to receive from the AICCLP, before any offsets or adjustments, as provided in the Arkansas Intrastate Carrier Common Line Pool tariff, as it existed before January 1, 2004;

(29) "Incumbent local exchange carrier" or "ILEC" means, with respect to a local exchange area, a local exchange carrier, including successors and assigns, that is certified by the commission and was providing basic local exchange service on February 8, 1996;

(30) "Interconnected VoIP service" has the meaning defined by 47 C.F.R. 9.3, as it existed on January 1, 2013;

(31) "Interstate access charge pools" means the system, currently administered by the National Exchange Carrier Association, Inc., wherein participating local exchange carriers pool billed interstate access revenues;

(32) "Local exchange area" means the geographic area, approved by the commission, encompassing the area within which a local exchange carrier is authorized to provide basic local exchange services and switched-access services;

(33) "Local exchange carrier" or "LEC" means a telecommunications provider of basic local exchange service and switched-access service. The term does not include commercial mobile service providers;

(34) "Local switching support" means funding to assist high-cost companies in recovering the costs of switching intrastate calls;

(35) "National Exchange Carrier Association, Inc.," or "NECA" means a corporation by that name or its successor that performs various administrative functions and procedural duties prescribed to it by the FCC and others;

(36) "Network element" means a facility or equipment used in the provision of a telecommunications service. The term also includes features, functions, and capabilities that are provided by means of the facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service;

(37) "Resale" means the purchase of services by one (1) local exchange carrier from another local exchange carrier for the purpose of reselling those services directly or indirectly to an end-user customer;

(38) "Rural telephone company" means a local exchange carrier defined as a rural telephone company in the federal act as of February 4, 1997;

(39) "Special intrastate ILEC revenue" means the revenue a toll reseller pays to an ILEC when the ILEC provides toll services to the toll reseller;

(40) "Study area" means a geographic area designated by the FCC and used by NECA or USAC for calculation of cost per loop within the geographic area's boundaries for federal high-cost loop support;

(41) "Switched-access service" means the provision of communications between a customer premise and an interexchange carrier's point of interconnection with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination or termination of interexchange long distance traffic;

(42) "Telecommunications provider" means any person, firm, partnership, corporation, association, or other entity that offers telecommunications services to the public for compensation;

(43) "Telecommunications Providers Rules" or "TPRs" means those rules applicable to telecommunications providers that have been adopted by the commission;

(44)(A) "Telecommunications services" means the offering to the public for compensation the transmission of voice, data, or other electronic information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities.

(B) The term does not include radio and television broadcast or distribution services, or the provision or publishing of yellow pages, regardless of the entity providing the services, or services to the extent that the services are used in connection with the operation of an electric utility system owned by a government entity;

(45)(A) "Tier one company" means any incumbent local exchange carrier that, together with its Arkansas affiliates that are also incumbent local exchange carriers, provides basic local exchange services to greater than one hundred fifty thousand (150,000) access lines in the State of Arkansas on February 4, 1997.

(B) Changes in designation of an incumbent local exchange carrier, or portions thereof, as a tier one company or non-tier one company may be effected by prior approval from the commission pursuant to § 23-17-411(i);

(46) "Toll reseller" means a carrier that resells intrastate telecommunications services that are provided to the carrier by an underlying carrier;

(47)(A) "Total customer access base" means the total of all eligible telecommunications carrier customer access lines within Arkansas of an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another entity.

(B) For the purposes of subdivision (47)(A) of this section, "own" means to own an equity interest or the equivalent thereof of more than ten percent (10%);

(48) "Underlying carrier" means a facilities-based CLEC or an interexchange carrier, other than an ILEC, that originates and terminates

intrastate interexchange calls on the public switched network directly or through resale to a toll reseller or an ILEC that provides the toll services used by a toll reseller;

(49) "Universal service" means those telecommunications services that are defined and listed in the definition of basic local exchange service until changed by the commission pursuant to § 23-17-404(e)(2)(A);

(50) "Universal Service Administration Company" or "USAC" means a corporation under that name or its successor that performs various administrative and procedural duties prescribed to it by the FCC and others;

(51) "Wire center" means the location of one (1) or more local switching systems, a point at which end user's loops within a defined geographic area converge;

(52) "Wireless ETC" means a wireless eligible telecommunications carrier that is a commercial mobile service provider; and

(53) "Wireline ETC" means a wireline eligible telecommunications carrier that is a local exchange carrier.

History. Acts 1997, No. 77, § 3; 2003, No. 1764, § 1; 2003, No. 1788, §§ 1-6; 2007, No. 385, §§ 2, 3; 2013, No. 442, §§ 2-5; 2019, No. 198, § 2.

A.C.R.C. Notes. Acts 2019, No. 198, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Arkansas is second-to-last in providing broadband internet to households, businesses, or other locations; and

"(2) A lack of reliable broadband can impact a community's success, including access to educational opportunities, healthcare opportunities, public safety, agriculture, and economic development opportunities.

"(b) It is the intent of the General Assembly to provide Arkansans with access to high quality voice, data, broadband, video, or wireless telecommunications services, resulting in increased educational opportunities, healthcare opportunities, and economic development opportunities and ensuring all Arkansans have equal access to the services they can use to improve their quality of life, their community, and this state".

Amendments. The 2019 amendment inserted "without limitation" and "and unincorporated" in (26).

23-17-404. Preservation and promotion of universal service.

(a)(1) The Arkansas High Cost Fund (AHCF) is established by this section in order to promote and assure the availability of universal service at rates that are reasonable and affordable and to provide for reasonably comparable services and rates between rural and urban areas.

(2) The AHCF shall provide funding to an eligible telecommunications carrier that provides basic local exchange services and other supported services using its own facilities or a combination of its own facilities and another carrier's facilities by the eligible telecommunications carrier within its study area.

(3) The AHCF shall be designed to provide predictable, sufficient, and sustainable funding to eligible telecommunications carriers serving rural or high-cost areas of the state.

(4) The AHCF shall also be used to accelerate and promote the incremental extension and expansion of broadband services and other advanced services in rural or high-cost areas of the state beyond what would normally occur and support the Lifeline Assistance Program to eligible low-income customers.

(b)(1) The AHCF is to provide a mechanism to restructure the present system of telecommunication service rates in the state as provided herein, and all telecommunications providers, except as prohibited by federal law, shall be charged for the direct and indirect value inherent in the obtaining and preserving of reasonable and comparable access to telecommunications services in the rural or high-cost areas. The value and utility of access to and interconnection with the public switched network will be lessened if the rural or high-cost areas do not have comparable access and subscribership.

(2)(A)(i) This AHCF charge for all telecommunications providers shall be proportionate to each provider's Arkansas intrastate retail telecommunications service revenues.

(ii) If the AHCF administrator determines or receives a petition from two-thirds (⅔) of the AHCF participants stating that the Arkansas intrastate retail telecommunications services revenues are inadequate to fully fund the AHCF requirements, the AHCF administrator shall notify the Arkansas Public Service Commission and the commission shall open a docket that will develop and implement a plan to fully fund the AHCF requirements.

(B) Because customers of the telecommunications providers that would pay the AHCF charge receive the benefits of a universal network, the telecommunications providers may surcharge their customers to recover the AHCF charges paid by the telecommunications provider. Therefore, the AHCF charge is not a tax and is not affected by state laws governing taxation.

(C) For the purpose of assessing mobile telecommunications services, the AHCF administrator shall continue to assess only Arkansas intrastate retail telecommunications service revenues and only to the extent such revenues may be considered located in the State of Arkansas in accordance with the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252.

(D) For purposes of assessing interconnected VoIP service, to the extent permitted by federal law the funding from each contributing carrier shall be based on:

(i) The total retail-billed Arkansas intrastate interconnected VoIP service revenues; or

(ii) The Federal Communications Commission's decision In the Matter of Universal Service Contribution Methodology, FCC 10-185, released November 5, 2010, or another assessment methodology as required by federal law.

(c)(1)(A) The Arkansas Public Service Commission shall delegate to a trustee, the "AHCF administrator", the administration, collection, and distribution of the AHCF within forty-five (45) days of the

effective date of the adoption of rules and procedures to implement the AHCF.

(B) In evaluating responses to request for proposals for the AHCF administrator's position, the commission shall consider and give material weight to the applicant's:

(i) Familiarity with Arkansas ETCs, Arkansas access rates, AIC-CLP history and procedures, and AHCF and AUSF history and procedures; and

(ii) Personal availability to provide information and assistance to the General Assembly, telecommunications providers, and members of the public.

(2)(A) The AHCF administrator shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the AHCF.

(B) As soon as practicable after the AHCF administrator is designated, he or she shall:

(i) Promptly notify all Arkansas ETCs of the availability of AHCF support and accept requests for AHCF support from Arkansas ETCs; and

(ii) Review and determine the accuracy and appropriateness of each request and advise the entity requesting the funds of his or her determination, including:

(a) Eligibility for support;

(b) The uncapped amount of support available; and

(c) The actual support available after implementation of fund cap limitations.

(C) The affected parties shall have thirty (30) days to request reconsideration by the commission of the AHCF administrator's determination, and the commission after notice and hearing, if requested, shall issue its opinion on the reconsideration within thirty (30) days after the request of reconsideration unless continued by the commission.

(D) Persons aggrieved by the commission's opinion shall have the right to appeal the opinion in accordance with law.

(d)(1) The AHCF administrator periodically shall establish and notify each telecommunications provider of the AHCF charge levels required to be paid by the telecommunications provider.

(2) Any telecommunications provider that without just cause fails to pay the AHCF charge that is due and payable pursuant to this section after notice and opportunity for hearing shall have its authority to do business as a telecommunications provider in the State of Arkansas revoked by the commission.

(3) The AHCF charge shall not be subject to any state or local tax or franchise fees.

(e) After reasonable notice and hearing, the commission shall establish rules and procedures necessary to implement the AHCF. The commission shall implement the AHCF and make AHCF funds available to eligible telecommunications carriers beginning the first calen-

dar month after one hundred fifty (150) days after March 19, 2007. In establishing and implementing the AHCF, the commission shall adhere to the following instructions and guidelines:

(1)(A) AHCF funding shall be provided directly to eligible telecommunications carriers.

(B)(i) Except in an exchange in which the electing company is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services under § 23-17-408(c), for an ETC to receive funds from the AHCF, the ETC shall agree to be subject to and comply with all telecommunications provider rules adopted by the commission, unless the commission finds the technology used by the ETC to provide telecommunications service makes a rule inapplicable.

(ii) Except in any exchange in which the electing company is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services pursuant to § 23-17-408(c), each ETC shall be subject to all TPRs concerning application for service, refusing service, deposits, notices before disconnect, late payment penalties, elderly and handicapped protection, medical need for utility services, delayed payment agreements, and extended due dates.

(iii) If an ETC seeks to participate in the AHCF program as a new funding recipient, the funding category applicable to the ETC shall be determined by the total customer access base of the ETC on the date of the application;

(2)(A) The commission shall provide a report to the Legislative Council by October 31 of the year prior to a regular session of the General Assembly detailing any recommended changes to the universal service list of requirements that are to be supported by the AHCF. This list may be approved by the General Assembly, and if approved, the AHCF support to ETCs may be adjusted, due to the approved changes, to reflect an increase or decrease in the size of the AHCF by increasing or decreasing the overall financial cap on the AHCF to recover the cost of additions or revisions to the universal service list concurrent with any such revisions to the list of universal services identified in § 23-17-403.

(B) In considering revisions to the universal service list, the commission shall consider the need for the addition or removal of a service to the list in order to maintain end-user rates for universal services that are reasonably comparable between urban and rural areas or to reflect changes in the type and quality of telecommunications services considered essential by the public as evidenced, for example, by those telecommunication services that are purchased and used by a majority of single-line urban customers.

(C) A rate case proceeding or earning investigation or analysis shall not be required or conducted in connection with the recovery of the cost of additions or revisions or in connection with the administration of the AHCF;

(3)(A)(i) The AICCLP members shall charge the rate under subdivision (e)(3)(B) of this section to underlying carriers.

(ii) The ILECs shall charge a reciprocal rate to other ILECs.

(iii) The commission may review the accuracy of the reciprocal rates and the per-access minute carrier common line rate charged under subdivision (e)(3)(B) of this section.

(iv) If the AICCLP fails to provide an ILEC's carrier common line net revenue requirement, the ILEC may obtain concurrent recovery of the revenue loss from basic local exchange rates, intrastate access rate adjustments, or a combination thereof. Any recovery of revenue loss under this subdivision (e)(3)(A)(iv) shall not be subject to the caps on local rates under § 23-17-412.

(B)(i) Through June 30, 2013, except as provided in this subdivision (e)(3)(B) and subdivisions (e)(4)(A) and (B) of this section, the intrastate carrier common line charges billed to ILECs and underlying carriers shall be determined at the rate of one and sixty-five hundredths cents (1.65¢) per intrastate access minute, exclusive of the amounts specified for funding the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund. However, ILECs that are not AICCLP members may charge at a rate that is less than one and sixty-five hundredths cents (1.65¢) and may recover the difference between the actual rate charged and one and sixty-five hundredths cents (1.65¢) as allowed under § 23-17-416(b)(3).

(ii) Beginning July 1, 2013, except as provided in this subdivision (e)(3)(B) and subdivisions (e)(4)(A) and (B) of this section, the intrastate carrier common line charges billed to ILECs and underlying carriers shall be determined at the rate of one and sixty-five hundredths cents (1.65¢) per originating intrastate access minute. However, ILECs that are not AICCLP members may charge at a rate that is less than one and sixty-five hundredths cents (1.65¢) per originating intrastate access minute and may recover the difference between the actual rate charged and one and sixty-five hundredths cents (1.65¢) as allowed under § 23-17-416(b)(3);

(4)(A)(i)*(a)* There is created an allocation of AHCF funds to be known as the "Extension of Telecommunications Facilities Fund".

(b) A maximum of five hundred thousand dollars ($500,000) per year of AHCF funds shall be allocated to fund the Extension of Telecommunications Facilities Fund to assist in the extension of telecommunications facilities to citizens not served by the wire line facilities of an eligible telecommunications carrier.

(ii)*(a)* There is created an AHCF allocation to be known as the "Arkansas Calling Plan Fund".

(b) The Arkansas Calling Plan Fund shall receive a maximum of four million five hundred thousand dollars ($4,500,000) per year to assist in funding the provision of calling plans in telephone exchanges in the state.

(iii)*(a)* There is created an AHCF allocation to be known as the "Arkansas 911 Rural Enhancement Program Fund".

(b) The Arkansas 911 Rural Enhancement Program Fund shall receive a maximum of three million dollars ($3,000,000) per year to:

(1) Advance the goals of universal service and help ensure that rural areas within the State of Arkansas have access to 911 services that are comparable to 911 services in urban areas within the state; and

(2) Provide funding to:

(A) The statewide Smart911 system established in Acts 2012, No. 213;

(B) The SmartPrepare System; and

(C) 911 administrative systems for emergency management under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.

(B)(i)*(a)* The Extension of Telecommunications Facilities Fund, the Arkansas Calling Plan Fund, and the Arkansas 911 Rural Enhancement Program Fund shall be paid through the Arkansas High Cost Fund.

(b) Payments made under subdivision (e)(4)(B)(i)*(a)* of this section may exceed and are in addition to the limit provided by subdivision (e)(4)(E)(ii)*(a)* of this section.

(ii) The AICCLP board, with the assistance of the administrator, shall allow recipients and payors to correct any errors concerning the AICCLP settlement process for corrections that are for the time period after December 31, 2003.

(C)(i) An ETC may receive support from the AHCF in accordance with this subdivision (e)(4)(C) and subdivisions (e)(4)(D) and (E) of this section.

(ii)*(a)* The formula is as follows for ETCs with fewer than five hundred thousand (500,000) access lines or customers:

(1) The AHCF administrator shall determine the support for High Cost Loop Support by using the most current annual filing of annual unseparated unlimited loop revenue requirement cost per loop of the ETC's study area as developed each year by NECA and filed with USAC. For an ETC not submitting such information, the ETC shall submit equivalent information to the administrator for the administrator to calculate as to cost per loop for wireline or per customer for commercial mobile service providers. Unless the commission determines otherwise, the raw financial data submitted to the administrator to establish an alternate cost per loop shall be treated as confidential;

(2) The AHCF administrator shall then subtract the per-loop federal high-cost loop support as developed each year by NECA and filed with USAC of the ETC's study area or alternatively the total high-cost loop support per loop or per customer as calculated by the AHCF administrator with data provided by the ETC;

(3) The AHCF administrator shall also subtract the amount of three hundred forty-four dollars and forty cents ($344.40) per loop, due to the responsibility of each ETC to fund through local rates and other revenue such as AICCLP revenue requirements and access

charges, to fund a significant portion of their cost per loop. Alternatively, the AHCF administrator shall subtract three hundred forty-four dollars and forty cents ($344.40) per loop or customer from ETCs not reporting loops and loop cost to NECA;

(4) The AHCF administrator shall determine the high-cost support for each ETC by subtracting these reductions as set forth in this formula from the annual unseparated unlimited loop revenue requirement and apply it to the total number of loops in the ETC's study area as of December 31 of the preceding year that are eligible for support for federal universal service. As to ETCs not reporting loops within its study area, the AHCF administrator shall apply the reductions to the total number of loops or customers of the ETC eligible for support for federal universal service as of December 31 of the preceding year; and

(5) The remaining balance, if positive as to each ETC, shall be the ETC's loop support element to support an ETC's high cost loops. As to ETCs funded based upon customers, the remaining balance, if positive, shall be called the "customer support element".

(b)(1) The AHCF administrator shall determine local switching support (LSS) of each ETC using the most current annual financial data submitted to NECA and calculated by USAC and applying the following procedure:

(A)(i) The AHCF administrator shall use the most current trued up local switching support amount that has been calculated by NECA and submitted to USAC annually for each ETC within its size group.

(ii) An ETC that does not submit the information required by subdivision (e)(4)(C)(ii)*(b)(1)(A)(i)* of this section shall submit equivalent information to the AHCF administrator for the AHCF administrator to calculate a local switching support amount.

(iii) For each ETC that does not have an individually calculated local switching support amount, the AHCF administrator shall calculate a local switching support amount by using an average of all ETCs within its size group that have an established local switching amount;

(B) The AHCF administrator shall calculate the local switching support factor for each ETC's study area by taking the 1996 weighted dialed equipment minute factor as supplied in the NECA submission of 1999 Network Data Management — Usage filed on March 1, 2001, with the FCC and subtracting the 1996 interstate dialed equipment minute factor as supplied in the NECA submission of 1999 network usage data filed on March 1, 2001, with the FCC. This result shall be called the "local switching support factor". For each ETC that does not have an individually calculated weighted dialed equipment minute factor and an interstate dialed equipment minute factor, the AHCF administrator shall calculate a weighted dialed equipment minute factor and an interstate dialed equipment minute factor by using an average of all ETCs within its size group that have an established weighted dialed equipment minute factor and an interstate dialed equipment minute factor;

(C) The AHCF administrator shall then calculate the total LSS revenue requirement for each ETC by dividing the local switching support amount calculated in subdivision (e)(4)(C)(ii)*(b)(1)(A)* of this section by the local switching support factor as calculated in subdivision (e)(4)(C)(ii)*(b)(1)(B)*of this section;

(D) The AHCF administrator shall then divide the total LSS revenue requirement for each ETC by the total number of loops in the ETC's study area as of December 31 of the preceding year that are eligible for support for federal universal service;

(E) The AHCF administrator shall then calculate the local switching support (LSS) to be recovered by multiplying the total LSS revenue requirement per loop as calculated in subdivision (e)(4)(C)(ii)*(b)(1)(D)* of this section by fifteen percent (15%); and

(F) The sum of subdivision (e)(4)(C)(ii)*(b)(1)(E)* of this section as to each ETC, if positive, shall be the ETC's local switching support element.

(2) If a request for support is made by an ETC that does not have switching support calculated by NECA, the commission shall develop a proxy method to be used to calculate such an ETC's local switching support. The sum of the calculation for each ETC from the proxy method, if positive, shall be the ETC's local switching support element.

(c)(1) For ETCs with AHCF support based on loops, the AHCF administrator shall determine each ETC's local loop support by multiplying the number of loops of the ETC as of December 31 of the preceding year that are eligible for federal universal service support by the ETC's loop support element, if applicable, and the AHCF administrator shall determine the ETC's local switching support by multiplying the number of loops of the ETC as of December 31 of the preceding year that are eligible for federal universal service support by the ETC's local switching support element. The AHCF administrator shall determine the uncapped AHCF support for each ETC by adding the sum of the ETC's total loop support, if any, and the ETC's total local switching support, if any.

(2) For ETCs with AHCF support based on customers, the AHCF administrator shall determine the ETC's customer support element by multiplying the number of customers of the ETC as of December 31 of the preceding year who are eligible for federal universal service support by the ETC's customer support element, if applicable, and the AHCF administrator shall determine the ETC's local switching support by multiplying the number of customers of the ETC as of December 31 of the preceding year who are eligible for federal universal service support by the ETC's local switching support element. The AHCF administrator shall determine the uncapped AHCF support for the ETC by adding the sum of the ETC's total loop support, if any, and the ETC's total local switching support, if any.

(3)(A) If the AHCF administrator determines that the changes in publicly available elements used to calculate loop support under

subdivision (e)(4)(C)(ii)*(a)(1)* of this section or local switching support under subdivision (e)(4)(C)(ii)*(b)(1)* of this section cause an under-recovery of more than ten percent (10%) of support by ETCs with a total customer access base or total customer base of fewer than fifteen thousand (15,000) lines or customers participating in the AHCF, then the AHCF administrator shall promptly notify the commission.

(B) Once notified, the commission shall open a rule-making docket to replace the eliminated, frozen, or modified elements that are causing the under-recovery used to calculate loop support under subdivision (e)(4)(C)(ii)*(a)(1)* of this section or local switching support under subdivision (e)(4)(C)(ii)*(b)(1)* of this section.

(C) Until alternate elements are adopted by the commission, the AHCF administrator shall use the previous determinations as used during the year immediately preceding the year the elements were eliminated to calculate loop support under subdivision (e)(4)(C)(ii)*(a)(1)* of this section or local switching support under subdivision (e)(4)(C)(ii)*(b)(1)* of this section.

(D) Upon commission adoption of the replacement elements, the commission shall order the AHCF administrator to incorporate those replacement elements into the previously existing method used by the AHCF administrator to calculate loop support under subdivision (e)(4)(C)(ii)*(a)(1)* of this section or local switching support under subdivision (e)(4)(C)(ii)*(b)(1)* of this section. The calculations shall be:

(i) Based on the fully allocated cost of the affected ETCs; and

(ii) Effective as of the next annual determination process date, as established by the commission.

(iii)*(a)* For ETCs with five hundred thousand (500,000) lines or more on or after December 31, 2010, support shall be determined using the following procedure:

(1) Using the FCC's synthesis model available from USAC or an equivalent replacement model, the AHCF administrator shall take the ETC's average monthly per-line cost for each eligible wire center and subtract the FCC cost model benchmark. The result of the line cost minus the benchmark is the available per-line high-cost support available for that wire center;

(2) The AHCF administrator then shall multiply the available high-cost support for each eligible wire center by the number of lines reported to the AHCF administrator by the carrier as of December 31 of the preceding year. Eligible wire centers shall be wire centers with three thousand (3,000) access lines or less as of March 19, 2007; and

(3) The total of the calculations by the AHCF administrator for all eligible wire centers shall be the high-cost support available to the ETC, as limited by cap restrictions.

(b) The support provided by the AHCF shall be calculated as an annual amount paid in equal monthly payments and recalculated annually by the AHCF administrator in compliance with this section and the commission's rules and procedures.

(iv) In the event that an element used to determine AHCF support is materially changed or eliminated, the AHCF administrator shall

use an equivalent or similar element in calculating the AHCF support in subdivisions (e)(4)(C)(ii) and (iii) of this section.

(D)(i) The AHCF administrator shall calculate each ETC's support by first calculating each ETC's uncapped AHCF support.

(ii) If the total calculated support to all ETCs within a size group is less than the capped amount of the size group's part of the total AHCF, each ETC within the size group shall be entitled to its total calculated AHCF support.

(E)(i)*(a)(1)(A)* The AHCF administrator shall apply the cap on the total AHCF and upon the specific size groups established within the AHCF annually.

(B) If total support due a size group does not exceed that size group's AHCF cap, the AHCF administrator shall pay that size group's full AHCF support amount.

(2) If total support, using the AHCF formula for recipients of the specific size group exceeds the cap, the administrator shall determine the amount that the total calculated AHCF support exceeds that size group's cap.

(b)(1) To reduce each size group's authorized support to conform to the size group's cap, the AHCF administrator shall determine total calculated AHCF support to each ETC within the size group.

(2) The AHCF administrator shall then use the total calculated support due all ETCs within the size group as the denominator and the amount the size group's AHCF calculation exceeds the cap as the numerator.

(3) The administrator shall then subtract from each ETC's total calculated support a pro rata portion, using the fraction established herein to reduce AHCF funding to the capped amount, based upon each ETC's total calculated support, to reduce the size group's support level to the capped AHCF amount.

(ii)*(a)* Except as provided in subdivision (e)(4)(B) of this section, funds available for distribution to ETCs from the AHCF shall not exceed and are capped at thirty-nine million eight hundred thousand dollars ($39,800,000) per year. Cost of administrating the AHCF shall first be deducted from the total capped fund before allocation of funding to the ETCs. The annual period to be used by the AHCF administrator to adjust support levels and upon which to apply any cap shall be on the calendar year. In addition to the total fund cap, the funds available from the AHCF shall also be capped based upon size groups using access lines for loop-based ETCs and customers for customer-based ETCs. Size grouping is used to ensure funds are targeted to areas most needing high-cost assistance. For the purpose of calculating the size grouping caps, total customer access base shall be used for loop-based ETCs and total customers for customer-based ETCs.

(b) For all ETCs with a total customer access base or total customer base of five hundred thousand (500,000) or more access lines or customers on or after December 31, 2010, the size group cap

shall be twelve and five-tenths percent (12.5%) of the total capped fund.

(c) For all ETCs with a total customer access base or total customer base of one hundred fifty thousand (150,000) or more access lines or customers and fewer than five hundred thousand (500,000) access lines or customers on December 31, 2010, the size group cap shall be twelve and five-tenths percent (12.5%) of the total capped fund.

(d) For all ETCs with a total customer access base or total customer base of fifteen thousand (15,000) or more access lines or customers and fewer than one hundred fifty thousand (150,000) access lines or customers on December 31, 2010, the size group cap shall be two percent (2%) of the total capped fund.

(e) For all ETCs with a total customer access base or total customer base of fewer than fifteen thousand (15,000) access lines or customers, the size group cap shall be seventy-three percent (73%) of the total capped fund;

(5)(A)(i) The commission shall establish by rule a grant program to make grants available to eligible telecommunications carriers for the extension of facilities to citizens who are not served by wire line services of an eligible telecommunications carrier. Grants may be requested by an eligible telecommunications carrier or citizens who are not served, or both.

(ii) The commission shall delegate to a trustee the administration, collection, and distribution of the Extension of Telecommunications Facilities Fund in accordance with the rules and procedures established by the commission. The trustee shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the Extension of Telecommunications Facilities Fund.

(B)(i) In establishing rules for the grant program, the commission shall consider demonstrated need, the length of time the citizens have not been served, the households affected, the best use of the funds, and the overall need for extensions throughout the state.

(ii) The commission may require each potential customer to be served by the extension of facilities to pay up to two hundred fifty dollars ($250) of the cost of extending facilities.

(C) The plan shall be funded by customer contributions and by the Extension of Telecommunications Facilities Fund established by subdivision (e)(4)(A)(i)*(a)* of this section;

(6)(A) Three million dollars ($3,000,000) shall be transferred annually from the AHCF to the Division of Emergency Management on a quarterly basis for the Arkansas 911 Rural Enhancement Program Fund to fund:

(i) The statewide Smart911 system in the amount of six hundred thousand dollars ($600,000) annually;

(ii) The SmartPrepare system in the amount of two hundred twenty-five thousand dollars ($225,000) annually;

(iii) The 911 administration system for emergency management under the Arkansas Emergency Services Act of 1973, § 12-75-101 et

seq., in the amount of one hundred seventy-five thousand dollars ($175,000) annually; and

(iv) Arkansas counties for 911 public safety answering points in the amount of two million dollars ($2,000,000) annually.

(B)(i) Funding for counties under subdivision (e)(6)(A)(iv) of this section shall be transferred based on county population and distributed as follows:

(a) The twenty-five (25) least-populated counties shall receive equal portions of fifty percent (50%) of the available funds;

(b) The next twenty-five (25) least-populated counties shall receive equal portions of thirty-five percent (35%) of the available funds; and

(c) The remaining twenty-five (25) counties shall receive equal portions of fifteen percent (15%) of the available funds.

(ii) County population shall be calculated based on current data from the Geography Division of the United States Bureau of the Census; and

(7)(A)(i) The commission shall provide quarterly reports to the Legislative Council. The reports shall include without limitation the number of requests for grants, the number of grants awarded, the amount awarded, and the number of additional customers served.

(ii) The commission shall notify members of the General Assembly of grants made in their districts.

(B) To allow time for potential applicants to request grants, no grants shall be awarded for three (3) months after the effective date of the rules establishing the program.

History. Acts 1997, No. 77, § 4; 2001, No. 907, § 4; 2001, No. 1771, § 1; 2001, No. 1842, § 1; 2003, No. 1788, § 7; 2007, No. 385, §§ 1, 4; 2011, No. 290, §§ 2-4; 2011, No. 594, § 2; 2013, No. 442, §§ 6-18; 2019, No. 315, § 2467.

Amendments. The 2019 amendment substituted "rule" for "regulation" in the first sentence of (e)(5)(A)(i) and made a similar change in (e)(5)(B)(i).

23-17-405. Eligible telecommunications carrier.

(a) The incumbent local exchange carrier, its successors and assigns, that owns, maintains, and provides facilities for universal service within a local exchange area on February 4, 1997, shall be the eligible telecommunications carrier within the local exchange area.

(b) The Arkansas Public Service Commission, consistent with 47 U.S.C. § 214(e)(2), after reasonable notice and hearing, may designate other telecommunications providers to be eligible for federal Universal Service Fund or AHCF support under the following conditions:

(1)(A) The other telecommunications provider accepts the responsibility to provide service in response to any reasonable request from customers in an incumbent local exchange carrier's local exchange area using its own facilities or a combination of its own facilities and resale of another carrier's services.

(B) High-cost support under this section will not begin until the telecommunications provider offers to provide service in response to all reasonable requests for service from customers in its service area;

(2) The telecommunications provider may only receive funding for services provided in the eligible telecommunications carrier's study area using its own facilities or a combination of its own facilities and another carrier's facilities;

(3) The telecommunications provider will not receive AHCF funding at a level higher than the level of funding received by the incumbent local exchange carrier in the same area;

(4) The telecommunications provider advertises the availability and the charges for the services, using media of general distribution; and

(5) It is determined by the commission that the designation is in the public interest.

(c)(1) In exchanges, wire centers, census blocks, or other areas where the commission has designated more than one (1) eligible telecommunications carrier, the commission shall permit a local exchange carrier to relinquish its designation as an eligible telecommunications carrier in any such area, consistent with 47 U.S.C. § 214(e)(4), upon a finding that at least one (1) eligible telecommunications carrier serves the area.

(2) In an area in which a local exchange carrier has relinquished its eligible telecommunications carrier designation, the local exchange carrier may:

(A) Continue providing services, including universal services; and

(B)(i) Discontinue providing services, including universal services.

(ii) If a local exchange carrier discontinues providing basic local exchange service under subdivision (c)(2)(B)(i) of this section, the carrier shall notify affected customers in writing at least ninety (90) days before discontinuing the service.

(d)(1)(A) For the entire area served by a rural telephone company, excluding tier one companies, for the purpose of the AHCF and the federal Universal Service Fund, there shall be only one (1) wireline eligible telecommunications carrier which shall be the incumbent local exchange carrier that is a rural telephone company.

(B) Multiple wireless eligible telecommunications carriers may be designated in areas served by rural telephone companies.

(2) The rural telephone company may elect to waive its right to be the only wireline eligible telecommunications carrier within the local exchange area by filing notice with the commission.

(e) To provide universal services, an eligible telecommunications carrier may use:

(1) Commercial mobile services;

(2) Voice over Internet Protocol; and

(3) Any other technology that provides service that is the functional equivalent of commercial mobile services or Voice over Internet Protocol.

History. Acts 1997, No. 77, § 5; 2007, No. 385, § 5; 2009, No. 191, § 1; 2013, No. 442, § 19; 2017, No. 419, § 1.

Amendments. The 2017 amendment, in (c)(1), substituted "In exchanges, wire centers, census blocks, or other areas" for "In exchanges or wire centers", inserted "in any such area", and substituted "serves" for "will continue to serve"; in the introductory language of (c)(2), inserted "local exchange" preceding "carrier" twice, substituted "has relinquished its" for "is not an", and inserted "designation"; and substituted "If a local exchange carrier discontinues providing basic local exchange service" for "If a carrier discontinues providing a service" in (c)(2)(B)(ii).

23-17-409. Authorization of competing local exchange carriers.

(a)(1)(A) Consistent with the federal act and the provisions of § 23-17-410, the Arkansas Public Service Commission is authorized to grant certificates of convenience and necessity to telecommunications providers authorizing them to provide telecommunications services, including basic local exchange service or switched-access service, or both, to an incumbent local exchange carrier's local exchange area if and to the extent that the applications otherwise comply with state law, designate the geographic areas proposed to be served by the applicants, and the applicants demonstrate that they possess the financial, technical, and managerial capacity to provide the competing services.

(B) No telecommunications provider shall operate as a CLEC in this state without first obtaining from the commission a certificate of public convenience and necessity.

(2) Competing local exchange carriers shall be required to maintain a current tariff or price list with the commission and to make prices and terms of service available for public inspection.

(3) Retail prices of competing local exchange carriers shall not require prior review or approval by the commission.

(b)(1) Except as otherwise provided in subdivisions (b)(2) and (b)(5) of this section, a government entity may not provide, directly or indirectly, basic local exchange, voice, data, broadband, video, or wireless telecommunications services.

(2) After reasonable notice to the public and a public hearing, a government entity owning an electric utility system or television signal distribution system may provide, directly or indirectly, voice, data, broadband, video, or wireless telecommunications services and make any telecommunications capacity or associated facilities that the government entity now owns, or may construct or acquire, available to the public upon terms and conditions as may be established by the government entity's governing authority, except the government entity may not use the telecommunications capacity or associated facilities to provide, directly or indirectly, basic local exchange service.

(3) Any restriction contained in this subsection shall not be applicable to the provision of telecommunications services to the extent the telecommunications services are used solely for 911, E911, or other emergency and law enforcement services, or for the provision of data, broadband, or non-entertainment video telecommunications services or facilities by or to a medical institution or an institution of higher

education to its students, faculty, staff, or patients, as the provision of the telecommunications services or facilities relates to academic, research, and healthcare information technology applications under the Arkansas Information Systems Act of 1997, § 25-4-101 et seq.

(4) This section does not prohibit a government entity from purchasing voice, data, broadband, video, or wireless telecommunications services, directly or indirectly, from a private provider through a contract administered and services managed by the Division of Information Systems under the Arkansas Information Systems Act of 1997, § 25-4-101 et seq.

(5) After reasonable notice to the public, a government entity may, on its own or in partnership with a private entity, apply for funding under a program for grants or loans to be used for the construction, acquisition, or leasing of facilities, land, or buildings used to deploy broadband service in unserved areas, as defined under the terms of the granting or lending program, and if the funding is awarded, then provide, directly or indirectly, voice, data, broadband, video, or wireless telecommunications services to the public in the unserved areas.

(c) A governmental entity that operates an electric utility system may deny any telecommunications provider access to its electric utility poles, ducts, conduits, or rights-of-way on a nondiscriminatory basis when there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

(d)(1) Except to the extent required by the federal act and this subchapter, the commission shall not require an incumbent local exchange carrier to negotiate resale of its retail telecommunications services, to provide interconnection, or to sell unbundled network elements to a competing local exchange carrier for the purpose of allowing the competing local exchange carrier to compete with the incumbent local exchange carrier in the provision of basic local exchange service.

(2) Promotional prices, service packages, trial offerings, or temporary discounts offered by the local exchange carrier to its end-user customers are not required to be available for resale.

(e) The prices for unbundled network elements shall include the actual costs, including an allocation of joint and common costs and a reasonable profit.

(f) As provided in 47 U.S.C. §§ 251 and 252, the commission's authority with respect to interconnection, resale, and unbundling is limited to the terms, conditions, and agreements pursuant to which an incumbent local exchange carrier will provide interconnection, resale, or unbundling to a CLEC for the purpose of the CLEC's competing with the incumbent local exchange carrier in the provision of telecommunications services to end-user customers.

(g)(1) As permitted by the federal act, the commission shall approve resale restrictions that prohibit resellers from purchasing retail local exchange services offered by a local exchange carrier to residential customers and reselling those retail services to nonresidential custom-

ers, or aggregating the usage of multiple customers on resold local exchange services, or any other reasonable limitation on resale to the extent permitted by the federal act.

(2) The wholesale rate of any existing retail telecommunications services provided by local exchange carriers that are not exempt from 47 U.S.C. § 251(c) and that are being sold for the purpose of resale shall be the retail rate of the service less any net avoided costs due to the resale.

(3) The net avoided costs shall be calculated as the total of the costs that will not be incurred by the local exchange carrier due to its selling the service for resale less any additional costs that will be incurred as a result of selling the service for the purpose of resale.

(h) Incumbent local exchange carriers shall provide competing local exchange carriers, at reasonable rates, nondiscriminatory access to operator services, directory listings and assistance, and 911 service only to the extent required in the federal act.

(i)(1) The commission shall approve any negotiated interconnection agreement or statement of generally available terms filed pursuant to the federal act unless it is shown by clear and convincing evidence that the agreement or statement does not meet the minimum requirements of 47 U.S.C. § 251.

(2) In no event shall the commission impose any interconnection requirements that go beyond those requirements imposed by the federal act or any interconnection regulations or standards promulgated under the federal act.

(j) In the event the commission is requested to arbitrate any open issues pursuant to 47 U.S.C. § 252, the parties to the arbitration proceeding shall be limited to the persons or entities negotiating the agreement.

History. Acts 1997, No. 77, § 9; 2003, No. 1788, § 8; 2011, No. 1050, § 1; 2013, No. 1133, § 3; 2019, No. 198, § 3; 2019, No. 910, § 6252.

A.C.R.C. Notes. Acts 2019, No. 198, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Arkansas is second-to-last in providing broadband internet to households, businesses, or other locations; and

"(2) A lack of reliable broadband can impact a community's success, including access to educational opportunities, healthcare opportunities, public safety, agriculture, and economic development opportunities.

"(b) It is the intent of the General Assembly to provide Arkansans with access to high quality voice, data, broadband, video, or wireless telecommunications services, resulting in increased educational opportunities, healthcare opportunities, and economic development opportunities and ensuring all Arkansans have equal access to the services they can use to improve their quality of life, their community, and this state".

Amendments. The 2019 amendment by No. 198 substituted "otherwise provided in subdivisions (b)(2) and (b)(5)" for "provided in subdivision (b)(2)", and "telecommunications services" for "telecommunication service" in (b)(1); in (b)(2), substituted the first occurrence of "government" for "governmental", "services" for "service", the second occurrence of "the government entity" for "it", the "the government entity's" for "its", deleted "hereafter" preceding "construct", and inserted the second occurrence of "associated"; in (b)(3), substituted "to the extent the telecommunications services are" for "or facilities to the extent", inserted "of the

telecommunications services or facilities"; substituted "government" for "governmental" in (b)(4); added (b)(5); and made stylistic changes.

The 2019 amendment by No. 910 substituted "Division of Information Systems" for "Department of Information Systems" in (b)(4).

RESEARCH REFERENCES

Ark. L. Rev. Justin C. Mankin, Comment: A Call for Competitive Broadband Reform in Arkansas, 68 Ark. L. Rev. 829 (2015).

23-17-411. Regulatory reform.

(a) Regarding the earnings, rates of return, or rate-base calculation of any electing company, any incumbent local exchange carrier that has filed notice in accordance with § 23-17-412, or any competing local exchange carrier, and provided that all such companies and carriers otherwise comply with the applicable ratemaking provisions of this subchapter, the Arkansas Public Service Commission shall not:

(1) Require the filing of any financial report, statement, or other document for the purpose of reviewing, monitoring, or regulating rate base, earnings, or rates of return; or

(2) Conduct any investigation of rate base, earnings, or rates of return.

(b) Notwithstanding the provisions of this subchapter, a rate group reclassification of an exchange from one (1) rate group to another occurring as a result of access line growth or loss of exchange access arrangements shall be allowed by the commission on request of a local exchange carrier.

(c) Consistent with the policy of telecommunications competition that is implemented with this subchapter, other than the commission's promulgation of rules required by this subchapter, the commission shall promulgate no new rule that increases regulatory burdens on telecommunications service providers, except upon a showing that the benefits of such rule are clear and demonstrable and substantially exceed the cost of compliance by the affected telecommunications service providers.

(d) Not later than one hundred eighty (180) days after February 4, 1997, the commission shall conduct a rulemaking proceeding to identify and repeal all rules relating to the provision of telecommunications service which are inconsistent with, have been rendered unnecessary by, or have been superseded by either this subchapter or the federal act.

(e) Not later than one hundred eighty (180) days after February 4, 1997, the commission shall revise its rules so that they apply, except as expressly provided in this subchapter, equally to all providers of basic local exchange service. All future rule changes promulgated by the commission shall apply equally to all providers of basic local exchange service.

(f)(1) In order to eliminate outdated, unnecessary, and burdensome laws and rules, electing companies, incumbent local exchange carriers filing notice under § 23-17-412, and competing local exchange carriers

shall not be subject to the requirements of §§ 23-2-304(a)(1), (7), and (8), 23-2-306, 23-2-307, 23-3-101 — 23-3-107, 23-3-112, 23-3-114, 23-3-118, 23-3-119(a)(2), 23-3-201, 23-3-206, 23-3-301 — 23-3-316, 23-4-101 — 23-4-104, 23-4-107, 23-4-109, 23-4-110, 23-4-201(d), 23-4-401 — 23-4-405, 23-4-407 — 23-4-419, and 23-17-113, or the commission's rules implementing the statutes.

(2) Notwithstanding any other provisions of law, the commission shall have no jurisdiction to impose any quality of service rules and standards or reporting, including without limitation the commission's telecommunications providers rules, on any telecommunications provider in any exchange in which an electing company is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services under § 23-17-408(c).

(3) If an electing company that is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services under § 23-17-408(c), a competing local exchange carrier, or an interexchange carrier posts on a publicly accessible website its generally available prices and terms of service for telecommunications services, the electing company, competing local exchange carrier, or interexchange carrier is not required to file or maintain with the commission any tariff or price list setting forth the rates, rentals, charges, privileges, facilities, rules, regulations, or forms of contract for telecommunications services.

(4) An electing company that is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services under § 23-17-408(c) may elect to be exempt from any requirement to offer a calling plan under § 23-17-120.

(g)(1) Except as provided in this subchapter with respect to universal services, the commission does not have jurisdiction to regulate:

(A) Commercial mobile services or commercial mobile service providers;

(B) Voice over Internet Protocol services; or

(C) Voice over Internet Protocol providers.

(2) This subsection does not apply to:

(A) The provisions of this subchapter concerning universal services;

(B) An entity's obligations under sections 251 and 252 of the Communications Act of 1934, 47 U.S.C. § 151 et seq.; or

(C) A right granted to an entity by sections 251 and 252 of the Communications Act of 1934, 47 U.S.C. § 151 et seq.

(h) The commission shall establish reasonable cost proxies, which rural telephone companies, excluding tier one companies, may use without producing company-specific cost studies, when cost studies would otherwise be required. Use of these proxies or the adoption of approved rates of non-rural telephone companies by rural telephone companies, excluding tier one companies, shall be deemed adequate proof of such rural telephone company costs.

(i) The commission may reclassify an incumbent local exchange carrier as a tier one company or a non-tier-one company only upon

petition by the incumbent local exchange carrier in connection with an increase or decrease in the number of the carrier's access lines in the state.

(j)(1) The unauthorized change of a customer's service to another telecommunications service provider is prohibited.

(2) To protect customers from any unauthorized changes in their choice of telecommunications service providers, no local exchange carrier shall honor a request by any person other than the customer to change the provider of intrastate long distance or local exchange service to the customer in the state, except:

(A) Where the request is placed by a local or long distance company that has provided to the local exchange carrier a letter of agency containing clear and conspicuous disclosure of the change signed by the customer authorizing the change;

(B) Where the customer affected by the change calls a toll-free number established by the company requesting the change to confirm the request for the change made in response to a contact initiated by the local exchange or long distance company requesting the change; or

(C) Where the commission otherwise expressly authorizes.

(3) Any telecommunications carrier that violates the verification procedures described in this subsection and collects charges for telecommunications services from the customer shall be liable to the carrier previously selected by the customer in an amount equal to all charges paid by the subscriber after the violation in accordance with the procedures that the commission may prescribe.

(4) The commission is also authorized to impose civil penalties, not to exceed five thousand dollars ($5,000) for any such violation.

History. Acts 1997, No. 77, § 11; 2011, No. 594, § 3; 2013, No. 442, §§ 20-22; 2013, No. 1098, §§ 1, 2; 2019, No. 315, §§ 2468, 2469.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c) and (d); deleted "or regulation" following "rule" in (c); and, in (f)(1), substituted the first occurrence of "rules" for "regulations" and deleted "and regulations" following the second occurrence of "rules".

23-17-413. Optional provision of database to vendors.

In order to assign the place of primary use for mobile telecommunications services pursuant to the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, the Secretary of the Department of Finance and Administration may choose whether to furnish vendors with a database that matches addresses with taxing jurisdictions or to allow vendors to employ an enhanced zip code of at least nine (9) digits in lieu of providing a database.

History. Acts 2001, No. 907, § 1; 2019, No. 910, § 3512.

Amendments. The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration".

Subchapter 5 — Small Wireless Facility Deployment Act

Effective Dates. Identical Acts 2019, Nos. 797 and 999, § 2: Sept. 1, 2019.

23-17-501. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The deployment of small wireless facilities and other next-generation wireless and broadband network facilities is a matter of federal and statewide concern and interest;

(2) Wireless and broadband products and services are a significant and continually growing part of the state's economy, and accordingly, encouraging the development of strong and robust wireless and broadband communications networks throughout the state is integral to the state's economic competitiveness;

(3) Rapid deployment of small wireless facilities will serve numerous important statewide goals and the public policy of:

(A) Meeting growing consumer demand for wireless data;

(B) Increasing competitive options for communications services available to the state's residents; and

(C) Promoting the ability of the state's citizens to communicate with other citizens and with their state and municipalities, and promoting public safety;

(4) Small wireless facilities, including facilities commonly referred to as "small cells" and distributed antenna systems are often deployed most effectively in a public right-of-way;

(5) To meet the key objectives of this subchapter and federal law, wireless service providers must have access to public rights-of-way and the ability to attach to infrastructure located in public rights-of-way to increase the density of the wireless service providers' networks and provide next-generation wireless services;

(6) Rates and fees for the permitting and deployment of small wireless facilities in public rights-of-way and on authority infrastructure, including poles, throughout the state, consistent with federal law, is reasonable and will encourage the deployment of robust next-generation wireless and broadband networks for the benefit of citizens throughout the state;

(7) The procedures, rates, and fees in this subchapter are:

(A) Consistent with federal law and multiple ordinances adopted by municipalities throughout the state;

(B) Fair and reasonable when viewed from the perspective of the state's citizens and the state's interest in having robust, reliable, and technologically advanced wireless and broadband networks; and

(C) Reflective of a balancing of the interests of the wireless providers deploying new facilities and the interests of authorities in recovering their costs of managing access to the public rights-of-way and the attachment space provided on authority infrastructure in the public rights-of-way;

(8) Municipalities are the custodians of public rights-of-way, and public property within the public rights-of-way, within the limits of their respective jurisdictions;

(9) Municipalities may adopt ordinances and regulations governing the use, construction, development, and appearance of public and private property within their respective jurisdictions; and

(10) Municipalities recognize the economic and social value of data connectivity and desire to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities within the public rights-of-way in a manner that is:

(A) Safe;

(B) Compatible with and complementary to the provision of services by the municipality and others lawfully using the rights-of-way; and

(C) Consistent with the aesthetic standards of the municipality.

(b) It is the intent of the General Assembly that the operation of small wireless facilities is a matter of statewide concern and interest.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-502. Title.

This subchapter shall be known and may be cited as the "Small Wireless Facility Deployment Act".

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-503. Definitions.

As used in this subchapter:

(1) "Affiliate" means an entity that directly or indirectly controls, is controlled by, or is under common control with another party;

(2) "Antenna" means communications equipment that transmits or receives an electromagnetic radio frequency signal in the provision of wireless service;

(3)(A) "Antenna equipment" means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and when collocated on a structure is mounted or installed at the same time as the antenna.

(B) "Antenna equipment" does not include:

(i) The structure or improvements on, under, or within which the equipment is collocated; or

(ii) Wireline backhaul facilities, coaxial or fiber optic cable that is between structures, or coaxial or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna;

(4) "Antenna facility" means an antenna and associated antenna equipment;

(5) "Applicable codes" means uniform electrical reliability, building, fire, electrical, plumbing, or mechanical codes, as adopted by a recognized national code organization, or local amendments to the codes that are of general application, or local ordinances that are of general application, that address public health, safety, or welfare and are consistent with this subchapter;

(6) "Applicant" means a person who submits an application as or on behalf of a wireless provider;

(7) "Application" means a request submitted by an applicant to an authority for a permit:

(A) To collocate small wireless facilities; or

(B) To install, modify, or replace a pole on which a small wireless facility is or will be collocated in the right-of-way;

(8)(A) "Authority" means a county, a municipality, a subdivision, or instrumentality thereof, including without limitation:

(i) A public utility district;

(ii) An irrigation district; or

(iii) A municipal electric utility.

(B) "Authority" does not include a state court having jurisdiction over an authority;

(9) "Authority pole" means a pole owned, managed, or operated by or on behalf of an authority;

(10)(A) "Collocate" or "collocate on" means the placement, mounting, replacement, or modification of a small wireless facility on, or of ground-mounted antenna equipment adjacent to, a structure.

(B) "Collocate" or "collocate on" includes collocated ground-mounted antenna equipment as a small wireless facility if it meets the requirements of subdivision (25)(A)(iii)-(vi) of this section and the associated facilities on the adjacent structure meet the requirements of subdivision (25)(A)(i)-(vi) of this section;

(11) "Communications service" means:

(A) A cable service, as defined in 47 U.S.C. § 522(6), as it existed on January 1, 2019;

(B) A telecommunications service, as defined in 47 U.S.C. § 153(53), as it existed on January 1, 2019;

(C) An information service, as defined in 47 U.S.C. § 153(24), as it existed on January 1, 2019; or

(D) Wireless service;

(12) "Communications service provider" means:

(A) A cable operator, as defined in 47 U.S.C. § 522(5), as it existed on January 1, 2019;

(B) A provider of information service, as defined in 47 U.S.C. § 153(24), as it existed on January 1, 2019;

(C) A telecommunications carrier, as defined in 47 U.S.C. § 153(51); or

(D) A wireless provider;

(13) "Control" means the direct or indirect:

(A) Ownership of at least fifty percent (50%) of the equity;

(B) Ability to direct at least fifty percent (50%) of voting power; or

(C) Ability otherwise to direct management policies;

(14) "Controlled-access facility" means a highway or street as described in § 27-68-102;

(15) "Decorative pole" means an authority pole that is specifically designed and placed for aesthetic purposes and on which limited appurtenances or attachments, such as a small wireless facility, lighting, specially designed informational or directional signage, or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory authority rules or codes;

(16) "Facility" means an antenna facility or a structure that is used for the provision of wireless service;

(17) "Fee" means a onetime, nonrecurring charge;

(18) "Historic district" means a group of buildings, properties, or sites that are:

(A) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register of Historic Places, according to Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 C.F.R. Part 1, Appendix C, as it existed on January 1, 2019;

(B) A historic district designated under the Historic Districts Act, § 14-172-201 et seq.; or

(C) A historic district otherwise designated under a local ordinance as of January 1, 2019;

(19) "Micro-wireless facility" means a wireless facility that:

(A) Is not larger in dimension than twenty-four inches (24″) in length, fifteen inches (15″) in width, and twelve inches (12″) in height;

(B) Has an exterior antenna that is no longer than eleven inches (11″); and

(C) Is not placed any farther than ten feet (10') down the span as measured from the side of the pole;

(20) "Permit" means an authorization, written or otherwise, required by an authority to perform an action or initiate, continue, or complete a project for the deployment of wireless service at a specified location;

(21) "Person" means an individual, corporation, limited liability company, partnership, association, trust, authority, or other entity or organization;

(22)(A) "Pole" means a pole in a right-of-way that may be used by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function or for collocation of small wireless facilities.

(B) "Pole" does not include a wireless support structure or an electric transmission structure;

(23) "Rate" means a recurring charge;

(24)(A) "Right-of-way" means an area on, below, or above a public utility easement, roadway, highway, street, sidewalk, alley, or similar property.

(B) "Right-of-way" does not include a federal interstate highway, controlled-access facility, or a public utility easement that does not authorize the deployment sought by the wireless provider;

(25)(A) "Small wireless facility" means a wireless facility that meets all of the following specifications:

(i) The facility:

(a) Is mounted on a structure fifty feet (50') or less in height, including the antennas;

(b) Is mounted on a structure no more than ten percent (10%) taller than other adjacent structures; or

(c) Does not extend an existing structure on which it is located to a height of more than fifty feet (50') or by more than ten percent (10%), whichever is greater;

(ii) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet (3 cu. ft.) in volume;

(iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is no more than twenty-eight cubic feet (28 cu. ft.) in volume;

(iv) The facility does not require antenna structure registration under 47 C.F.R. Part 17, as it existed on January 1, 2019;

(v) The facility is not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as it existed on January 1, 2019; and

(vi) The facility does not result in human exposure to radio frequencies in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as it existed on January 1, 2019.

(B) "Small wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is located or collocated or to which the equipment is attached; and

(ii) Any wireline backhaul facility or coaxial or fiber optic cable that is between wireless support structures or utility poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna;

(26) "Structure" means a pole or wireless support structure, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service;

(27) "Technically feasible" means that by virtue of engineering or spectrum usage the proposed placement for a small wireless facility, or its design, concealment measures, or site location, can be implemented without a material reduction in the functionality of the small wireless facility;

(28) "Wireless infrastructure provider" means a person or an affiliate thereof, including a person authorized to provide communications service in the state, that builds or installs facilities for the provision of wireless service, but that is not a wireless service provider;

(29) "Wireless provider" means a wireless infrastructure provider or a wireless service provider;

(30) "Wireless service" means any service using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public;

(31) "Wireless service provider" means a person who provides wireless service;

(32)(A) "Wireless support structure" means a structure, including:

(i) A monopole;

(ii) A tower, either guyed or self-supporting;

(iii) A billboard;

(iv) A building; or

(v) Any other existing or proposed structure designed to support or that is capable of supporting small wireless facilities, other than a structure designed solely for the collocation of small wireless facilities.

(B) "Wireless support structure" does not include a pole; and

(33) "Wireline backhaul facility" means an aboveground or underground facility used to transport communications services from a wireless facility to a network.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-504. Exclusive arrangements.

An authority shall not enter into an exclusive arrangement with a person for use of the right-of-way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of poles for the collocation.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-505. Use of rights-of-way by wireless provider.

(a) Subject to this subchapter, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate, maintain, modify, operate, and replace small wireless facilities and to install, maintain, modify, and replace poles it owns or manages or, with the permission of the owner, a third party's pole, associated with a small wireless facility, along, across, upon, and under the right-of-way.

(b) Small wireless facilities and associated poles shall be installed and maintained as to not obstruct or hinder the usual travel or public safety of the right-of-way or the usage of the right-of-way by utilities.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-506. Requirements — Height limits — Standards.

(a) Each new or modified pole installed in the right-of-way for the purpose of the collocation of small wireless facilities shall not exceed the greater of:

(1) Fifty feet (50') in height above ground level; or

(2) Ten percent (10%) taller than the tallest existing pole in place in the same right-of-way as of September 1, 2019, within three hundred feet (300') of the new or modified pole.

(b) A new small wireless facility in the right-of-way shall not extend more than ten percent (10%) above the existing structure on which it is located or fifty feet (50') above ground level, whichever is greater.

(c) A wireless provider shall have the right to collocate a wireless facility and install, maintain, modify, and replace a pole that exceeds the height limits required under subsection (a) of this section along, across, upon, and under the right-of-way, subject to this section and any applicable zoning regulations.

(d) A wireless provider shall not install a small wireless facility or pole in a historic district without complying with the requirements of general application for structures within the historic district.

(e) A wireless provider may replace decorative poles when necessary to deploy a small wireless facility so long as the replacement reasonably conforms to the design of the original decorative pole.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-507. Damage and repair — Replacements — Abandonment — Removal.

(a)(1) A wireless provider shall repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and return the right-of-way to its functional and aesthetic equivalence before the damage under the competitively neutral, reasonable requirements and specifications of the authority.

(2) If the wireless provider fails to make the repairs required by the authority within a reasonable time after written notice, the authority may make those repairs and charge the applicable party the actual and reasonable documented cost, including overhead, of the repairs.

(b)(1) A wireless provider is not required to replace or upgrade an existing pole except for reasons of structural necessity or compliance with applicable codes.

(2) A wireless provider may, with the permission of the pole owner, replace or modify existing poles, but any such replacement or modification shall substantially conform to the design aesthetics of the pole being modified or replaced.

(c)(1) A wireless provider shall notify the authority at least thirty (30) days before the wireless provider's abandonment of a small wireless facility.

(2) If the wireless provider fails to remove the abandoned small wireless facility within ninety (90) days after the notice, the authority may undertake the removal and recover the actual and reasonable documented cost, including overhead, of the removal from the wireless provider, or its successors or assigns.

(d)(1) An authority may order the removal of a small wireless facility or associated pole in the right-of-way that violates § 23-17-505, § 23-17-506, or applicable codes.

(2) The authority shall provide written notice of the violation to the owner of the small wireless facility at least thirty (30) days before removal to afford the owner the opportunity to conduct repairs or removal or otherwise remedy the violation.

(3)(A) If the authority determines that a wireless provider's activity in a right-of-way under this subchapter creates an imminent risk to public safety, the authority may provide written notice to the wireless provider and demand that the wireless provider address the risk.

(B) If the wireless provider fails to reasonably address the risk within twenty-four hours of the written notice, the authority may take or cause to be taken action to reasonably address the risk and charge the wireless provider the reasonable documented cost of the actions.

(e)(1) A wireless provider shall not collocate a small wireless facility or install, modify, or replace a pole in the right-of-way that:

(A) Materially interferes with the safe operation of traffic control equipment;

(B) Materially interferes with sight lines or clear zones for transportation or pedestrians;

(C) Materially interferes with compliance with the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, or similar federal or state standards regarding pedestrian access or movement; or

(D) Fails to comply with applicable codes.

(2)(A) For an authority that requires permits under § 23-17-510, compliance with these criteria will be determined during the permitting process.

(B) An authority that does not require a permit under § 23-17-510 shall provide at least thirty (30) days' notice of and a reasonable opportunity to cure a violation of subdivision (e)(1) of this section.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

U.S. Code. The Americans with Disabilities Act, referred to in this section, is codified primarily as 42 U.S.C. § 12101 et seq.

23-17-508. Aesthetic standards.

(a) An authority that has adopted an ordinance under § 14-17-209 or § 14-56-416 may adopt and enforce standards that govern the aesthetic appearance of small wireless facilities and associated poles to ensure coordinated, adjusted, and harmonious development, as provided in this section.

(b) Aesthetic standards adopted by an authority for small wireless facilities and associated poles shall meet the following requirements:

(1) The aesthetic standards shall be:

(A) Reasonable, in that they are technically feasible and reasonably directed to avoiding or remedying unsightly or out-of-character deployments;

(B) No more burdensome than those applied to other types of utility and communications infrastructure deployments; and

(C) Objective and published at least ninety (90) days in advance of the filing of an application under this subchapter;

(2) Any design or concealment measures are not considered a part of the small wireless facility for purposes of the size parameters in the definition of "small wireless facility"; and

(3) An authority may deny an application for not complying with aesthetic requirements only if the authority finds that the denial does not prohibit or have the effect of prohibiting the provision of wireless service.

(c) An authority may prohibit wireless providers from installing poles in the right-of-way in areas where the authority has required that all communications and electric lines be placed underground, if:

(1) The authority has required all electric and communications lines to be placed underground by a date certain that is three (3) months before the submission of the application;

(2) Any poles the authority allows to remain shall be made available to wireless providers for the collocation of small wireless facilities, and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities, in compliance with this subchapter;

(3) A wireless provider may install a new pole in the designated area that otherwise complies with this section when it is not able to provide wireless service by collocating on a remaining structure; and

(4)(A) For small wireless facilities installed before an authority adopts requirements that communications and electric lines be placed underground, an authority adopting the requirements shall:

(i) Permit a wireless provider to maintain the small wireless facilities in a place on any pole not required to be removed, subject to any applicable pole attachment agreement with the pole owner; or

(ii) Permit the wireless provider to replace an existing pole within fifty feet (50') of the prior location.

(B) An authority may require wireless providers to comply with reasonable and nondiscriminatory horizontal spacing requirements of general application for new poles and ground-mounted small wireless facilities, but the requirements shall not prevent a wireless provider from serving any location.

(d)(1) When a wireless provider applies to install a new pole in the right-of-way in an area zoned for residential use, the authority may propose an alternative location in the right-of-way within one hundred feet (100') of the location stated in the application, and the wireless provider shall use the authority's proposed alternative location unless the location imposes technical limits or significant additional costs.

(2) The wireless provider shall certify that it has made the determination in good faith, based on the assessment of a licensed engineer, and the wireless provider shall provide a written summary of the basis for the determination.

(e) Aesthetic standards shall be effective after approval by ordinance, resolution, or rule of the governing body of the authority.

(f)(1) The board of zoning adjustment of an authority may:

(A) Hear appeals of the decision of the administrative officers in respect to the enforcement and application of the aesthetic standards, and may affirm or reverse, in whole or in part, the decision of the administrative officers; and

(B) Hear requests for variances from the literal provisions of the aesthetic standards and grant the variances only when it is necessary to avoid the prohibition of wireless service or otherwise comply with the law.

(2) Decisions of the board in respect to subdivision (f)(1) of this section shall be subject to appeal only to a court of record having jurisdiction.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-509. Collocation on authority poles.

(a) This section applies to activities of a wireless provider collocating small wireless facilities on authority poles in the authority's right-of-way or in a right-of-way controlled by the Arkansas Department of Transportation located within an authority.

(b)(1) A person owning, managing, or controlling authority poles in the right-of-way shall not enter into an exclusive arrangement with any person for the right to attach to the poles.

(2) A person who purchases or otherwise acquires an authority pole is subject to the requirements of this section.

(c) An authority shall allow the collocation of small wireless facilities on authority poles on nondiscriminatory terms and conditions using the process in § 23-17-510.

(d) The rate to collocate on authority poles is provided in § 23-17-511.

(e)(1)(A) As part of an application to collocate a small wireless facility on an authority pole, the wireless provider shall submit make-ready design drawings and work descriptions that enable the pole to support the requested collocation by the wireless provider, including pole replacement if necessary.

(B) An authority may amend the make-ready design drawings and work to comply with applicable codes before the issuance of a permit to the extent reasonably necessary.

(2) The rates, fees, and terms and conditions for the make-ready work to collocate on an authority pole shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with this subchapter.

(3) The authority shall not require more make-ready work than required to meet applicable codes or industry standards nor may the fees for make-ready work include costs related to preexisting or prior damage or noncompliance.

(4)(A) An authority may require replacement of an authority pole only if the collocation would make the authority pole structurally unsound.

(B) The authority may require that the replaced authority pole have the same functionality as the pole being replaced.

(C) If the authority pole is replaced, the authority shall take ownership of the new pole and operate authority fixtures on the pole.

(5)(A) Make-ready fees charged by an authority may include the amount the authority pays a professional engineer registered in Arkansas to review the wireless provider's make-ready work plans.

(B) Fees for make-ready work shall not include any revenue or contingency-based consultant's fees or expenses of any kind.

(6) Within sixty (60) days of the receipt of the application filed to collocate on an authority pole, the authority shall elect to:

(A) Perform the make-ready work necessary to enable the pole to support the requested collocation by a wireless provider and provide a good-faith estimate for the work, including pole replacement, if necessary; or

(B) Authorize the wireless provider to perform the make-ready work.

(7)(A) The authority shall complete make-ready work it elects to perform, including any pole replacement, within sixty (60) days of written acceptance of the good-faith estimate of the applicant.

(B) If the authority electing to perform the make-ready work has not completed the work within sixty (60) days after the written acceptance and deposit of the good-faith estimate by the applicant, the applicant may demand a return of any deposited funds and

proceed with the make-ready work as described in subdivision (e)(1)(A) of this section, using authorized, qualified contractors approved by the authority with the authorization not to be unreasonably withheld, conditioned, or delayed.

(f)(1) An authority may reserve space on an authority pole for future public safety or transportation uses in a documented and approved plan in place at the time an application is filed.

(2) A reservation of space shall not preclude placement of a pole or collocation of a small wireless facility.

(3) If replacement of the authority's pole is necessary to accommodate the collocation of the small wireless facility and future use, the wireless provider shall pay for the replacement of the authority pole, and the replaced pole shall accommodate future use.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-510. Permits.

(a)(1) This section applies to all permits required for the collocation of small wireless facilities and to the permitting of the installation, modification, and replacement of associated poles by a wireless provider that:

(A) Is in an authority's right-of-way; or

(B) Is in a right-of-way controlled by the Arkansas Department of Transportation located within the jurisdiction of an authority if the application is for collocation on an authority pole or if the authority has adopted aesthetic standards under § 23-17-508.

(2) A permit issued under subdivision (a)(1)(B) of this section remains subject to the rules of the department.

(b) Except as provided in this subchapter, an authority shall not prohibit, regulate, or charge for the collocation of small wireless facilities or the installation, modification, or replacement of associated poles that may be permitted in this section.

(c) An authority may require an applicant to obtain one (1) or more permits to collocate small wireless facilities or to install a new, modified, or replacement pole associated with a small wireless facility as provided in §§ 23-17-505 – 23-17-507, provided the permits are of general applicability and do not apply exclusively to small wireless facilities.

(d) An authority shall receive and process applications subject to the following requirements:

(1) An authority shall not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority, including without limitation reserving fiber, conduit, or space on the applicant's pole for the authority;

(2) An authority may require an applicant to submit the information and fees stated in subdivisions (d)(2)(A)-(J) of this section for a permit

for a deployment in the authority's right-of-way or on an authority pole in the right-of-way controlled by the department located within an authority and may only require an applicant to submit the information and fees stated in subdivisions (d)(2)(A)-(C) of this section and subdivision (d)(2)(J) of this section for deployments of or on poles that are not owned by the authority located in the right-of-way controlled by the department located within an authority:

(A) Identification of the applicant;

(B) A map or description of the location of the facilities;

(C) An illustration that shows the final appearance of the facilities;

(D) Engineering drawings of the facilities to be installed, including required make-ready work to be performed;

(E) Electrical load information;

(F) Pole loading calculations;

(G) Worker safety information related to small-wireless-facility installation;

(H) Evidence of bonding, if required;

(I) Evidence of insurance, if required; and

(J) Required application fees;

(3) An authority shall not require:

(A) The collocation of small wireless facilities on any specific pole or category of poles or require multiple antenna facilities on a single pole;

(B) The use of specific pole types or configurations when installing new or replacement poles; or

(C) The underground placements of small wireless facilities that are, or are designated in an application, to be pole-mounted or ground-mounted;

(4) An authority shall not limit the collocation of small wireless facilities by minimum horizontal separation distance requirements from existing small wireless facilities, poles, or wireless support structures;

(5) The applicant shall attest that the small wireless facilities will be operational for use by a wireless service provider within one (1) year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power, communications, transportation facilities to the site, or any other factors outside of the applicant's control;

(6)(A) Within ten (10) days of receiving an application, an authority shall determine and notify the applicant in writing whether the application is complete.

(B) If an application is incomplete, the authority shall specifically identify the missing information in writing.

(C) The processing deadline in subdivision (d)(7) of this section shall restart at zero (0) on the date the applicant provides the missing information identified under subdivision (d)(6)(B) of this section to complete the application;

(7)(A) Applications shall be processed on a nondiscriminatory basis within:

(i) Sixty (60) days of receipt of an application for the collocation of a small wireless facility; and

(ii) Ninety (90) days for an application to install, modify, or replace a pole on which a small wireless facility is or will be collocated.

(B) The processing deadline may be tolled by agreement of the applicant and the authority.

(C) If an authority fails to act on a complete application within the applicable deadline, the application shall be deemed to be approved ten (10) days after written notice is provided by the applicant to the authority that the time period for acting on the application has lapsed;

(8) An authority may deny a proposed collocation of a small wireless facility or the installation, modification, or replacement of a pole in its right-of-way that meets the requirements in § 23-17-506(a)-(c) only if authorized under subdivision (d)(9) of this section or subdivision (d)(10) of this section or the proposed deployment:

(A) Materially interferes with the safe operation of traffic control equipment;

(B) Materially interferes with sight lines or clear zones for transportation or pedestrians;

(C) Materially interferes with compliance with the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, or similar federal or state standards regarding pedestrian access or movement;

(D) Fails to comply with applicable codes; or

(E) Fails to comply with § 23-17-506(d) and (e) and § 23-17-508;

(9) An authority may deny a proposed collocation of a small wireless facility on an authority pole in a right-of-way controlled by the department located within the authority that meets the requirements in § 23-17-506 only if the proposed collocation meets the criteria in subdivision (d)(8)(A) of this section or subdivision (d)(8)(D) of this section or fails to comply with aesthetic standards adopted in an ordinance under § 23-17-508;

(10) An authority may deny a proposed collocation of a small wireless facility or the installation, modification, or replacement of a pole in a right-of-way controlled by the department located within the authority that meets the requirements in § 23-17-506 only if the proposed deployment fails to comply with aesthetic standards adopted in an ordinance under § 23-17-508;

(11)(A) The authority shall document the basis for a denial, including the specific code, rule, or statutory authority on which the denial is based, and send the documentation to the applicant on or before the day the authority denies an application.

(B) The applicant may cure the deficiencies identified by the authority and resubmit the application within thirty (30) days of the denial without paying an additional application fee.

(C) The authority shall approve or deny the revised application within thirty (30) days of resubmission and limit its review to the deficiencies cited in the denial;

(12)(A)(i) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority shall be allowed at the applicant's discretion to file a batched application for small wireless facilities and associated poles and receive a single permit for the collocation of multiple small wireless facilities and the placement of associated poles.

(ii) However, the denial of one (1) or more small wireless facilities in a batched application shall not delay processing of any other small wireless facilities or poles in the same consolidated application.

(B) Batched applications shall be collectively processed according to the procedures in this section.

(C) A consolidated application that includes new pole deployments shall be subject to a ninety-day time frame for approval;

(13)(A) Installation or collocation for which a permit is granted under this section shall be completed within one (1) year after the permit issuance date unless the authority and the applicant agree to extend this period or a delay is caused by circumstances beyond the applicant's control.

(B) Approval of an application authorizes the applicant to undertake the installation or collocation;

(14) Subject to applicable relocation requirements and the applicant's right to terminate at any time, the applicant shall operate and maintain the small wireless facilities and any associated poles covered by the permit for a period of not less than ten (10) years, which shall be renewed for equivalent durations so long as the small wireless facilities comply with the criteria stated in subdivision (d)(8) of this section; and

(15) An authority shall not institute, either expressly or de facto, a moratorium on:

(A) Filing, receiving, or processing applications; or

(B) Issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of associated poles.

(e)(1) An authority shall not require an application for:

(A) Routine maintenance;

(B) The replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller; or

(C) The installation, placement, maintenance, operation, or replacement of a micro-wireless facility that is suspended on cables that are strung between existing poles and that complies with the applicable codes.

(2) However, an authority may require a permit for work that requires excavation or closure of sidewalks or vehicular lanes within the right-of-way for the activities.

(3) A permit shall be issued to the applicant on a nondiscriminatory basis upon terms and conditions applied to any other person's activities in the right-of-way that requires excavation, closing of sidewalks, or vehicular lanes.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

U.S. Code. The Americans with Disabilities Act, referred to in this section, is codified primarily as 42 U.S.C. § 12101 et seq.

23-17-511. Fees and rates.

(a) This section shall govern an authority's rates and fees for use of authority poles and the placement of a small wireless facility or associated poles.

(b) An authority shall not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by this subchapter for the right to use or occupy a right-of-way, for collocation of small wireless facilities on or in structures in the right-of-way, or for the installation, maintenance, modification, and replacement of associated poles in the right-of-way.

(c) Application fees for a permit shall be nondiscriminatory and shall not collectively exceed the following:

(1) One hundred dollars ($100) for each small wireless facility; or

(2) Two hundred fifty dollars ($250) for the installation, modification, or replacement of a pole together with the collocation of an associated small wireless facility in the right-of-way.

(d)(1) Except as described in § 23-17-510(e), a wireless provider shall pay an authority compensation for use of the right-of-way, an annual rate of up to thirty dollars ($30.00) per small wireless facility.

(2) A wireless provider shall pay an authority compensation for collocation of small wireless facilities on authority poles an annual rate of up to two hundred forty dollars ($240) for each authority pole.

(e) A wireless provider is not required to pay an authority compensation for micro-wireless facilities that are suspended on cables strung between existing utility poles in the right-of-way as long as the wireless provider compensates the authority through other licenses or franchises held directly or through one (1) of the wireless provider's affiliates for the placement of the suspension cables in the right-of-way.

(f) The rates under this section, together with a onetime application fee, shall be the total compensation that the wireless provider is required to pay the authority for the deployment of small wireless facilities in the right-of-way and any associated poles.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-512. Local authority.

(a)(1) Subject to this subchapter and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries with respect to wireless support structures, including the enforcement of applicable codes.

(2) An authority shall not have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or

operation of a small wireless facility located in an interior structure or upon the site of a campus, stadium, or athletic facility not owned or controlled by the authority, other than to require compliance with applicable codes.

(b) This subchapter does not authorize the state or any political subdivision, including an authority, to require small wireless facility deployment or to regulate wireless service.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-513. Arkansas Public Service Commission — Jurisdiction over pole attachments.

(a) This subchapter does not limit, abrogate, or supersede the jurisdiction of the Arkansas Public Service Commission, or any rule or order of the commission concerning pole attachments under § 23-4-1001 et seq., or any agreement of a public utility pole owner and attacher related to the rates, terms, and conditions for a pole attachment.

(b) This subchapter does not authorize:

(1) Any attachment or installation to or on an electric-cooperative-owned pole;

(2) Any attachment or installation within a nonpublic right-of-way acquired by an electric cooperative; or

(3) Use of an electric-cooperative-owned line, duct, conduit, similar structure, or equipment of any type.

(c) This subchapter does not authorize:

(1) Any attachment or installation to or on an investor-owned electric-utility-owned pole;

(2) Any attachment or installation within a nonpublic right-of-way acquired by an investor-owned electric public utility; or

(3) Use of an investor-owned electric-public-utility-owned line, duct, conduit, similar structure, or equipment of any type.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-514. Implementation.

(a)(1) An authority may adopt an ordinance that makes available to wireless providers rates, fees, and other terms that comply with this subchapter.

(2) Subject to the other provisions of this section, in the absence of an ordinance or agreement that substantially implements this subchapter and until such an ordinance is adopted or agreement is reached, if at all, a wireless provider may collocate small wireless facilities and install associated poles under the requirements of this subchapter.

(3) An authority shall not require a wireless provider to enter into an agreement to implement this subchapter, but such agreements are permissible if voluntary and nondiscriminatory.

(b) Ordinances and agreements implementing this subchapter are public or private arrangements and are matters of legitimate and significant statewide concern.

(c)(1) A provision of an agreement or ordinance with an effective date before September 1, 2019, that does not fully comply with this subchapter shall apply only to small wireless facilities and associated poles that were operational before September 1, 2019, and shall be deemed invalid and unenforceable beginning on the one hundred eighty-first day after September 1, 2019.

(2) To the extent an agreement or ordinance, or part thereof, is invalid under subdivision (c)(1) of this section, small wireless facilities and associated poles that became operational before September 1, 2019, under the agreement or ordinance, may remain installed and be operated under the requirements of this subchapter.

(d)(1) An agreement or ordinance with an effective date of September 1, 2019, or later that applies to small wireless facilities and associated poles is invalid and unenforceable unless it fully complies with this subchapter.

(2) In the absence of an ordinance or agreement that complies with this subchapter, a wireless provider may install and operate small wireless facilities and associated poles in the right-of-way under the requirements of this subchapter.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-515. Dispute resolution.

(a) A court of competent jurisdiction shall have jurisdiction to determine disputes arising under this subchapter.

(b) Pending resolution of a dispute concerning rates for collocation of small wireless facilities on authority poles in the right-of-way, the authority owning or controlling the structure shall allow the collocating person to collocate at annual rates of no more than:

(1) Thirty dollars ($30.00) per small wireless facility for use of the right-of-way; and

(2) An annual rate of up to two hundred forty dollars ($240) for each authority pole used for the collocation of small wireless facilities, with rates to be trued up upon final resolution of the dispute.

(c) Any disputes, wherever filed, shall be pursued according to accelerated docket or complaint procedures, if available.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-516. Indemnification, insurance, and bonding.

(a) An authority may adopt reasonable indemnification, insurance, and bonding requirements related to the deployment of small wireless facilities and associated poles under this subchapter.

(b)(1) An authority may require a wireless provider to defend, indemnify, and hold harmless the authority and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney's fees resulting from the installation, construction, repair, replacement, operation, or maintenance of poles, small wireless facilities, or attachments to authority poles to the extent directly caused by the negligence of the wireless provider, its contractors, subcontractors and their officers, employees, or agents.

(2) A wireless provider has no obligation to defend, indemnify, or hold harmless an authority or its officers, agents, or employees against any liabilities or losses due to or caused by the sole negligence of the authority or its employees or agents.

(c)(1) An authority may require a wireless provider to have in effect insurance coverage against the claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney's fees described in subsection (b) of this section, so long as the authority imposes similar requirements on other right-of-way users and the requirements are reasonable and nondiscriminatory, and provided that an authority does not require a wireless provider to obtain insurance naming the authority or its officers and employees as additional insureds.

(2)(A) A wireless provider with net assets of at least five hundred million dollars ($500,000,000), including the assets of its affiliates, may self-insure as to any required coverage.

(B) An authority may require reasonable proof that the wireless provider is eligible under subdivision (c)(2)(A) of this section to self-insure.

(C) A wireless provider shall immediately notify each authority in which the wireless provider has obtained permits of any change in its self-insured status as to any coverage required under this subsection, and of any change in the ability of the wireless provider to cover the losses specified in subdivision (c)(1) of this section.

(d)(1) An authority may adopt bonding requirements for small wireless facility collocations if the authority imposes similar requirements in connection with other right-of-way users.

(2) The purpose of the bonds shall be to:

(A) Provide for the removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines need to be removed to protect public health, safety, or welfare; and

(B) Recoup rates or fees that have not been paid by a wireless provider in over twelve (12) months, so long as the wireless provider has received reasonable notice from the authority of any of the noncompliance listed above and an opportunity to cure.

(3)(A) Bonding requirements shall not exceed one thousand dollars ($1,000) per small wireless facility.

(B) For wireless providers with multiple small wireless facilities within the jurisdiction of a single authority, the total bond amount across all facilities may not exceed ten thousand dollars ($10,000), which amount may be combined into a single bond instrument.

(C) An authority may waive bonding requirements for a wireless provider that already maintains bonding for other operations.

(D) An authority shall not require a cash bond, unless either of the following applies:

(i) The wireless provider has failed to obtain or maintain a bond required under this section; or

(ii) The surety has defaulted or failed to perform on a bond given to the authority on behalf of the wireless provider.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

23-17-517. Overlapping jurisdiction of management of right-of-way.

(a) In an area where more than one (1) authority may assert jurisdiction over a right-of-way, only the authority controlling the smallest geographic territory shall be authorized to adopt standards under § 23-17-508, issue permits under § 23-17-510, or require the payment of fees under § 23-17-511.

(b) This section does not restrict the authority of the Arkansas Department of Transportation over the location of a facility in a right-of-way controlled by the department.

History. Acts 2019, No. 797, § 1; 2019, No. 999, § 1.

CHAPTER 18

LIGHT, HEAT, AND POWER UTILITIES

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

23-18-101. Areas of service.

(a) Notwithstanding any provisions of law or the terms of any certificate of convenience and necessity, franchise, permit, license, or other authority granted to a public utility or electric cooperative corporation by the state or a municipality, no public utility or electric cooperative corporation shall furnish or offer to furnish electric service at retail and not for resale in any area allocated by the Arkansas Public Service Commission to another electric cooperative corporation or public utility.

(b) No later than ninety (90) days after February 21, 2003, the commission shall commence a rulemaking proceeding to identify and to repeal or amend all rules adopted by the commission to facilitate, or in anticipation of, retail electric competition that are inconsistent with, have been rendered unnecessary by, or have been superseded by this act.

History. Acts 1935, No. 324, § 41; Pope's Dig., § 2104; Acts 1957, No. 103, § 3; 1967, No. 234, § 5; A.S.A. 1947, § 73-240; 2003, No. 204, § 10; 2019, No. 315, § 2470.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

23-18-103. Purchase of electricity from affiliated company — Definitions.

(a) As used in this section:

(1) "Affiliated company" means any business entity which is owned wholly or partly by an electric utility or which wholly or partly owns an electric utility, or any business entity which is owned by another business entity which wholly or partly owns an electric utility; and

(2) "Electric utility" means an electric utility subject to the jurisdiction of the Arkansas Public Service Commission.

(b) Without the prior approval of the commission, no electric utility shall enter into any agreement for the purchase of electricity from an affiliated company.

(c) Any agreement entered into in violation of this section shall be void.

(d) The commission shall promulgate such rules as are necessary to implement this section.

(e) This section shall apply to agreements entered into on or after June 28, 1985.

History. Acts 1985, No. 173, §§ 1-5; A.S.A. 1947, §§ 73-278 — 73-278.4; Acts 1999, No. 1556, § 7; 2001, No. 324, §§ 3, 4; 2003, No. 204, § 4; 2019, No. 315, § 2471.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (d).

23-18-106. Regulation of resource planning, asset acquisition, and alternative retail services.

(a) The Arkansas Public Service Commission shall have the authority to adopt rules under which electric utilities shall seek commission review and approval of the processes, actions, and plans by which the utilities:

(1) Engage in comprehensive resource planning;

(2) Acquire electric energy, capacity, and generation assets; or

(3) Utilize alternative methods to meet their obligations to serve Arkansas retail electric customers.

(b) With regard to electric cooperatives formed under the Electric Cooperative Corporation Act, § 23-18-301 et seq., to the extent that an electric distribution cooperative purchases electricity from an electric generation and transmission cooperative pursuant to a wholesale power contract, the authority granted to the commission by subdivisions (a)(1) and (2) of this section shall not extend to the electric distribution cooperative to the extent of such purchases but shall only extend to the electric generation and transmission cooperative.

(c) Subsection (a) of this section does not apply to any transaction involving the acquisition of generation assets, which is closed and finalized prior to the adoption of the rules authorized in subsection (a) of this section, or within one (1) year after February 21, 2003, whichever comes later, and which is the subject of an order or ruling of any federal or state regulatory agency issued on or before January 1, 2003.

(d)(1)(A) Reasonable and prudent costs incurred in compliance with subsection (a) of this section and in compliance with the provisions of § 23-3-201 et seq. and the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., shall be eligible for recovery in the rates of any electric utility making such an acquisition, subject to final approval by the commission.

(B) When the utility establishes that the costs were incurred in compliance with subsection (a) of this section, a rebuttable presumption is established that the costs were reasonable and prudent and incurred in the public interest.

(2) Nothing in this subsection shall be deemed to supersede the provisions of § 23-4-103.

(e) The commission may require an electric public utility that is owned by a public utility holding company, as defined by section 1262 of the Energy Policy Act of 2005, Pub. L. No. 109-58, and engages in centralized system-wide resource planning to withdraw from centralized system-wide resource planning if:

(1) The commission determines that centralized system-wide resource planning is not in the public interest; and

(2) The electric public utility's withdrawal from centralized system-wide resource planning is not otherwise prohibited by law.

History. Acts 2003, No. 204, § 11; 2007, No. 648, § 1; 2019, No. 315, §§ 2472, 2473.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the introductory language of (a) and in (c).

Subchapter 2 — Electric Cooperatives Generally

23-18-203. Commission rules shall not conflict with United States Government regulations.

The Arkansas Public Service Commission shall make no rules affecting electric cooperative corporations in matters of accounting, record-keeping, or fiscal management in conflict with regulations which have been, or shall be, promulgated by the Administrator of the Rural Electrification Administration of the United States Department of Agriculture [superseded] or such other agency or instrumentality described in § 23-18-202.

History. Acts 1967, No. 234, § 3; A.S.A. 1947, § 73-202.3; Acts 2019, No. 315, § 2474.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the section heading and in the section.

Subchapter 5 — Utility Facility Environmental and Economic Protection Act

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Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health,

and safety shall become effective on July 1, 2019".

23-18-503. Definitions.

As used in this subchapter:

(1) "Applicant" means the utility or other person making application to the Arkansas Public Service Commission for a certificate of environmental compatibility and public need;

(2)(A) "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility.

(B) "Commence to construct" does not include:

(i) Changes needed for temporary use of sites or routes for nonutility purposes; or

(ii) Uses in securing survey or geological data, including necessary borings to ascertain foundation conditions;

(3) "Commission" means the Arkansas Public Service Commission;

(4) "Energy-efficient" means economical in the use of energy;

(5) "Energy resource declaration-of-need proceeding" means a utility-specific proceeding conducted by the Arkansas Public Service Commission under §§ 23-18-106 and 23-18-107 and the rules adopted thereunder to determine the need for additional energy supply and transmission resources by a public utility;

(6) "Major utility facility" means:

(A) An electric generating plant and associated transportation and storage facilities for fuel and other facilities designed for or capable of operation at a capacity of fifty megawatts (50 MW) or more;

(B) For the sole purpose of requiring an environmental impact statement under this subchapter, an electric transmission line and associated facilities including substations of:

(i) A design voltage of one hundred kilovolts (100 kV) or more and extending a distance of more than ten (10) miles; or

(ii) A design voltage of one hundred seventy kilovolts (170 kV) or more and extending a distance of more than one (1) mile; or

(C) For the sole purpose of requiring an environmental impact statement under this subchapter, a gas transmission line and associated facilities designed for or capable of transporting gas at pressures in excess of one hundred twenty-five pounds per square inch (125 psi) and extending a distance of more than one (1) mile except gas pipelines devoted solely to the gathering of gas from gas wells constructed within the limits of any gas field as defined by the Oil and Gas Commission;

(7) "Merchant generator" means a person or entity, including an affiliate of a public utility, engaged directly or indirectly through one (1) or more affiliates, that is in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale;

(8) "Merchant transmission provider" means a person or entity that owns or operates facilities used for the transmission of electric energy and whose rates or charges are not subject to the jurisdiction of the commission;

(9) "Municipality" means any county or municipality within the state;

(10) "National interest electric transmission corridor" means an area of the state found by the United States Secretary of Energy to be experiencing electric energy transmission capacity constraints or congestion and therefore designated as a national interest electric transmission corridor by the United States Secretary of Energy under the authority granted by section 1221(a) of the Energy Policy Act of 2005, Pub. L. No. 109-58;

(11) "Nonrenewable energy technology" or "nonrenewable energy sources" means any technology or source of energy that depends upon the use of depletable fossil fuels such as oil, gas, and coal;

(12) "Person" includes an individual, group, firm, partnership, corporation, cooperative association, municipality, government subdivision, government agency, local government, or other organization;

(13) "Public utility" or "utility" means a person engaged in the production, storage, distribution, sale, delivery, or furnishing of electricity or gas, or both, to or for the public, as defined in § 23-1-101(9)(A)(i) and (B), but does not include an exempt wholesale generator as defined in § 23-1-101(5);

(14) "Regional transmission organization" means an entity approved by the Federal Energy Regulatory Commission to plan and operate facilities for the transmission of electric energy within a designated region; and

(15) "Renewable energy technology" means any technology or source of energy that is not depletable, including without limitation solar, wind, biomass conversion, hydroelectric, or geothermal.

History. Acts 1973, No. 164, § 3; 1977, No. 866, § 1; 1979, No. 245, § 1; A.S.A. 1947, § 73-276.2; Acts 1999, No. 1322, § 2; 2007, No. 658, § 1; 2011, No. 910, § 2; 2019, No. 315, § 2475.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (5).

23-18-506. Division of Environmental Quality's and Arkansas Pollution Control and Ecology Commission's jurisdiction unaffected by subchapter.

(a) This subchapter does not affect the:

(1) Jurisdiction of the Division of Environmental Quality or the Arkansas Pollution Control and Ecology Commission with respect to water and air pollution control or other matters within the jurisdiction of the division or the Arkansas Pollution Control and Ecology Commission; and

(2) Requirement that a person apply for and obtain a permit from the division as provided by the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

(b) This subchapter does not confer upon the Arkansas Public Service Commission any authority or jurisdiction conferred by law upon the division or the Arkansas Pollution Control and Ecology Commission.

(c) Notwithstanding the exemption provisions of § 23-18-504, each major utility facility constructed in Arkansas is subject to the environmental rules and regulations of the state and federal regulatory bodies having jurisdiction over the air, water, and other environmental impacts associated with the major utility facility.

History. Acts 1973, No. 164, § 19; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.18; Acts 1999, No. 1164, § 179; 2011, No. 910, § 4; 2019, No. 910, § 3241.

Amendments. The 2019 amendment substituted "Division" for "Arkansas Department" in the section heading and in (a)(1); and substituted "division" for "department" in (a) and (b).

23-18-507. Authority of commission — Legislative intent.

(a) Nothing in this subchapter shall be deemed to confer upon the Arkansas Public Service Commission power or jurisdiction to regulate or supervise the rates, service, or securities of any person not otherwise subject to the Arkansas Public Service Commission's jurisdiction.

(b) The Arkansas Public Service Commission, in the discharge of its duties under this subchapter or any other act, is authorized to make joint investigations, hold joint hearings in or outside the state, and to issue joint or concurrent orders in conjunction or concurrence with any official or agency of any other state or of the United States, whether in the holding of such investigations or hearings or in the making of such orders the Arkansas Public Service Commission functions under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the United States, or otherwise.

(c) In the discharge of its duties under this subchapter, the Arkansas Public Service Commission is further authorized to negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of the United States Congress, for cooperative efforts in certification, construction, financing, operation, and maintenance of major utility facilities in accord with the purposes of this subchapter and for the enforcement of the respective state laws regarding them.

(d) The Arkansas Public Service Commission is deemed to be the agency of the State of Arkansas that shall be the member of any regional hearing authority or commission created by the terms of any compact between Arkansas and other states or between Arkansas and the United States otherwise concerning the implementation of this subchapter, except as may be provided by §§ 23-18-505 and 23-18-506.

(e) It is the intent of the General Assembly to confer upon the Arkansas Public Service Commission, under this subchapter, broad

rulemaking authority adequate to enable it to comply with any requirements imposed by state or federal legislation dealing with the subject matter of this subchapter upon state-administered certification programs and to enable it to comply with any state or federal requirements for facilitating the issuance of tax-exempt bonds should their issuance be authorized.

(f)(1) Under §§ 23-18-106 and 23-18-107 and the rules adopted thereunder, the Arkansas Public Service Commission may determine the need for additional energy supply and transmission resources by public utilities in an energy resource declaration-of-need proceeding.

(2) A determination of need under subdivision (f)(1) of this section shall be deemed the basis for the need for the construction of a major utility facility to be sited and constructed under this subchapter.

History. Acts 1973, No. 164, §§ 14, 18; 1977, No. 866, § 1; A.S.A. 1947, §§ 73-276.13, 73-276.17; Acts 2011, No. 910, § 5; 2019, No. 315, § 2476.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (f)(1).

23-18-508. Rules.

The Arkansas Public Service Commission shall have and is granted the power and authority to make and amend from time to time after reasonable notice and hearing reasonable rules establishing exemptions from some or all of the requirements of this subchapter for the construction, reconstruction, or expansion of any major utility facility which is unlikely to have major adverse environmental or economic impact by reason of length, size, location, available space, or right-of-way on or adjacent to existing utility facilities, and similar reasons.

History. Acts 1973, No. 164, § 4; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.3; Acts 2019, No. 315, § 2477.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading and made a similar change in the section.

23-18-511. Application for certificate — Contents generally.

An applicant for a certificate shall file with the Arkansas Public Service Commission a verified application in the form required by the commission and containing the following information:

(1) A general description of the location and type of the major utility facility proposed to be built;

(2) A general description of any reasonable alternate location or locations considered for the proposed facility;

(3) A statement of the need and reasons for construction of the facility, including, if applicable, a reference to any prior commission action in an energy resource declaration-of-need proceeding determining the need for additional energy supply or transmission resources by the public utility;

(4) A statement of the estimated costs of the major utility facility and the proposed method of financing the construction of the major utility facility;

(5)(A) A general description of any reasonable alternate methods of financing the construction of the major utility facility and a description of the comparative merits and detriments of each alternate financing method considered.

(B) If at the time of filing of the application the federal income tax laws and the state laws would permit the issuance of tax-exempt bonds to finance the construction of the proposed major utility facility for the applicant by a state financing agency, the application shall also include a discussion of the merits and detriments of financing the major utility facility with the bonds;

(6) An analysis of the projected economic or financial impact on the applicant and the local community in which the major utility facility is to be located as a result of the construction and the operation of the proposed major utility facility;

(7) An analysis of the estimated effects on energy costs to the consumer as a result of the construction and operation of the proposed major utility facility;

(8)(A) An exhibit containing an environmental impact statement that fully develops the six (6) factors listed in subdivision (8)(B) of this section, treating in reasonable detail such considerations, if applicable, as:

(i) The proposed major utility facility's direct and indirect effect on the following in the area in which the major utility facility is to be located:

(a) The ecology of the land, air, and water environment;

(b) Established park and recreational areas; and

(c) Any sites of natural, historic, and scenic values and resources of the area in which the major utility facility is to be located; and

(ii) Any other relevant environmental effects.

(B) The environmental impact statement shall state:

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects that cannot be avoided;

(iii) A description of the comparative merits and detriments of each alternate location considered for the major utility facility;

(iv) For generating plants, the energy production process considered;

(v) A statement of the reasons why the proposed location and production process were selected for the major utility facility; and

(vi) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented;

(9) The interstate benefits expected to be achieved by the proposed construction or modification of an electric transmission line and associated facilities, as described in § 23-18-503(6)(B), that is located within a national interest electric transmission corridor; and

(10) Such other information of an environmental or economic nature as the applicant may consider relevant or as the commission may by rule or order require.

History. Acts 1973, No. 164, § 5; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.4; Acts 1999, No. 1556, § 9; 2001, No. 324, §§ 7, 8; 2003, No. 204, §§ 12, 13; 2007, No. 658, § 3; 2009, No. 164, § 7; 2011, No. 910, § 6; 2013, No. 1133, § 5; 2019, No. 315, § 2478.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (10).

23-18-513. Application for certificate — Service or notice of application.

(a) Each application for a certificate of environmental compatibility and public need shall be accompanied by proof of service of a copy of the application on:

(1) The mayor of each municipality;

(2) The county judge;

(3) The chair of the county planning board, if any;

(4) Any head of a governmental agency charged with the duty of protecting the environment or of planning land use, upon which the Arkansas Public Service Commission has by rule or order directed that service be made, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed;

(5) Each member of the General Assembly in whose district the facility or any alternative location listed in the application is to be located;

(6) The office of the Governor; and

(7) The director or other administrative head of the following state agencies or departments:

(A) Division of Environmental Quality;

(B) Department of Health;

(C) Arkansas Economic Development Commission;

(D) Arkansas Department of Transportation;

(E) Arkansas State Game and Fish Commission;

(F) Arkansas Natural Heritage Commission;

(G) Any state agency which may have the authority to assist in financing the applicant's facility;

(H) Any other state agency or department which manages or has jurisdiction over state-owned lands on which all or part of the proposed utility facility is to be or may be located;

(I) Department of Finance and Administration;

(J) State Energy Conservation and Policy Office [abolished];

(K) Attorney General; and

(L) Any other state agency or department designated by Arkansas Public Service Commission rule or order; and

(8) Proof that a copy of the application has been made available for public inspection at all public libraries in each county in which the proposed utility facility is to be or may be located.

(b) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed and a notice that interventions or limited appearances must be filed with the Arkansas Public Service Commission within thirty (30) days after the date set forth as the date of filing, unless good cause is shown pursuant to § 23-18-517.

(c)(1) Each application shall also be accompanied by proof that written notice specifying the date on or about which the application is to be filed and the date that interventions or limited appearances must be filed with the Arkansas Public Service Commission, unless good cause is shown pursuant to § 23-18-517, has been sent by certified mail to each owner of real property on the proposed route selected by the utility on which a major utility facility is to be located or constructed.

(2) The written notice required by this subsection shall be directed to the address of the owner of the real property as it appears on the records in the office of the county sheriff or county tax assessor for the mailing of statements for taxes as provided in § 26-35-705.

(d)(1) Each application shall also be accompanied by proof that public notice of the application was given to persons residing in municipalities and counties entitled to receive notice under subsection (a) of this section by the publication in a newspaper having substantial circulation in the municipalities or counties of:

(A) A summary of the application;

(B) A statement of the date on or about which it is to be filed; and

(C) A statement that intervention or limited appearances shall be filed with the Arkansas Public Service Commission within thirty (30) days after the date stated in the notice, unless good cause is shown under § 23-18-517.

(2)(A) For purposes of this subsection, an environmental impact statement submitted as an exhibit to the application need not be summarized, but the published notice shall include a statement that the impact statements are on file at the office of the Arkansas Public Service Commission and available for public inspection or are available electronically on the Arkansas Public Service Commission's website.

(B) The applicant shall also cause copies of the environmental impact statement to be furnished to at least one (1) of its local offices, if any, in the counties in which any portion of the major utility facilities are to be located, both as primarily or as alternatively proposed, to be there available for public inspection.

(C) The published notice shall contain a statement of the location of the local offices described in subdivision (d)(2)(B) of this section and the times the impact statements will be available for public inspection.

(e) Inadvertent failure of service on or notice to any of the municipalities, counties, governmental agencies, or persons identified in subsections (a) and (c) of this section may be cured pursuant to orders of the Arkansas Public Service Commission designed to afford such

persons adequate notice to enable their effective participation in the proceedings.

(f) In addition, after filing, the Arkansas Public Service Commission may require the applicant to serve notice of the application or copies thereof, or both, upon such other persons and file proof thereof, as the Arkansas Public Service Commission may deem appropriate.

(g) Where any personal service or notice is required in this section, the service may be made by any officer authorized by law to serve process, by personal delivery, or by certified mail.

History. Acts 1973, No. 164, § 5; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.4; Acts 1997, No. 540, § 88; 1999, No. 1164, § 180; 1999, No. 1351, § 1; 2011, No. 910, § 7; 2017, No. 707, § 265; 2019, No. 315, §§ 2479, 2480; 2019, No. 910, § 3242.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(7)(D).

The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a)(4) and (a)(7)(L).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(7)(A).

23-18-515. Amendment of certificates.

(a) Upon application by an applicant, a certificate issued under this subchapter may be amended as provided in this section or in accordance with such simplified procedures as the Arkansas Public Service Commission may establish by reasonable rules.

(b) An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe.

(c)(1) Notice of such an application shall be given as set forth in § 23-18-513(a)-(c).

(2) Any party which files an application for an amendment of a certificate shall serve copies thereof on each party to the original proceedings.

History. Acts 1973, No. 164, §§ 4-6; 1977, No. 866, § 1; A.S.A. 1947, §§ 73-276.3 — 73-276.5; Acts 2019, No. 315, § 2481.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a).

23-18-519. Decision of commission — Modifications of application.

(a)(1) The Arkansas Public Service Commission shall render a decision upon the record either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the location, financing, construction, operation, or maintenance of the major utility facility as the commission may deem appropriate.

(2) The record may include by reference the findings of the commission in an energy resource declaration-of-need proceeding that the utility needs additional energy supply resources or transmission resources.

(b) The commission shall not grant a certificate for the location, financing, construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the commission, unless it finds and determines:

(1)(A) The basis of the need for the major utility facility.

(B) In determining the basis of the need for the major utility facility, the commission may rely upon the commission's determination in an energy resource declaration-of-need proceeding that the utility needs additional energy supply resources or transmission resources;

(2) That the major utility facility will serve the public interest, convenience, and necessity;

(3) The nature of the probable environmental impact of the major utility facility;

(4) That the major utility facility represents an acceptable adverse environmental impact, considering the state of available technology, the requirements of the customers of the applicant for utility service, the nature and economics of the proposal, any state or federal permit for the environmental impact, and the various alternatives, if any, and other pertinent considerations;

(5) The nature of the probable economic impact of the major utility facility;

(6) That the major utility facility financing method either as proposed or as modified by the commission represents an acceptable economic impact, considering economic conditions and the need for and cost of additional public utility services;

(7) In the case of an electric transmission line, that the major utility facility is not inconsistent with plans of other electric systems serving the state that have been filed with the commission;

(8) In the case of a gas transmission line, that the location of the line will not pose an undue hazard to persons or property along the area to be traversed by the line;

(9) That the energy efficiency of the major utility facility, as described in § 23-18-503(6)(A), has been given significant weight in the decision-making process;

(10) That the location of the major utility facility as proposed conforms as closely as practicable to applicable state, regional, and local laws and regulations issued thereunder, except that the commission may refuse to apply all or part of any regional or local law or regulation if it finds that, as applied to the proposed major utility facility, the law or regulation is unreasonably restrictive in view of the existing technology, factors of cost or economics, or the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(11) The interstate benefits expected to be achieved by the proposed construction or modification of an electric transmission line and associated facilities, as described in § 23-18-503(6)(B), that is located within a national interest electric transmission corridor; and

(12) That any conditions attached to a certificate for the construction or modification of an electric transmission line and associated facilities, as described in § 23-18-503(6)(B), that is located within a national interest electric transmission corridor do not interfere with reduction of electric transmission congestion in interstate commerce or render the project economically infeasible.

(c)(1) If the commission determines that the location or design of all or a part of the proposed major utility facility should be modified, it may condition its certificate upon the modification, provided that the municipalities, counties, and persons residing therein affected by the modification shall have been given reasonable notice thereof, if the persons, municipalities, or counties have not previously been served with notice of the application.

(2) If the commission requires in the case of a transmission line that a portion thereof shall be located underground in one (1) or more areas, the commission, after giving appropriate notice and an opportunity to be heard to affected ratepayers, shall have the power and authority to authorize the adjustment of rates and charges to customers within the areas where the underground portion of the transmission line is located in order to compensate for the additional costs, if any, of the underground construction.

(d)(1) If the commission determines that financing of all or part of the proposed major utility facility should be modified, it may condition its certificate upon the modification.

(2) If at the time of filing the application or within sixty (60) days thereafter, the federal income tax laws and the state laws would permit the issuance of tax-exempt bonds to finance the construction of the proposed major utility facility for the applicant and if the commission determines that financing the major utility facility with such tax-exempt bonds would be in the best interests of the people of the state, the commission, after giving appropriate notice and an opportunity to be heard to the parties, shall have the power and authority to require by order or rule that the major utility facility be financed in such manner as may be provided elsewhere by law.

(e) A copy of the decision and any order issued therewith shall be served upon each party within sixty (60) days after the conclusion of each hearing held under this subchapter.

History. Acts 1973, No. 164, § 9; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.8; Acts 1999, No. 1556, § 10; 2001, No. 324, §§ 9, 10; 2003, No. 204, §§ 14, 15; 2007, No. 658, § 5; 2009, No. 164, § 8; 2011, No. 910, § 9; 2013, No. 1133, § 6; 2019, No. 315, § 2482.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (d)(2).

23-18-526. Powers of local governments and state agencies.

Notwithstanding any other provision of law, no municipality, local government unit, or state department or agency, except the Division of Environmental Quality as set out in § 23-18-506, may require any

approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a major utility facility authorized by a certificate issued pursuant to the provisions of this subchapter. Nothing in this subchapter shall prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of the major utility facility.

History. Acts 1973, No. 164, § 13; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.12; Acts 1999, No. 1164, § 181; 2019, No. 910, § 3243.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the first sentence.

23-18-529. Forecasts of loading and resources — Reports.

(a)(1) Each public utility shall annually furnish to the Arkansas Public Service Commission for its review a report containing a forecast of loads and resources and describing the major utility facilities which, in the judgment of the utility, will be required to supply system demands during the forecast period.

(2) The forecast shall cover a period of at least two (2) calendar years next succeeding the date of the report, and such additional longer-range forecast reports as the commission may find necessary and may require by rule from time to time.

(3) All such reports shall be available to public inspection. A copy of any report shall be furnished by the commission to any municipality, county, or government agency charged with the duty of protecting the environment or the duty of planning land use if that agency requests a copy of such a report in writing.

(4) The report shall be in such form and shall contain such information as may be reasonably prescribed by the commission by rule.

(b) Pursuant to this section, the commission may also require each public utility to furnish from time to time reports concerning actions taken by the utility to encourage the conservation of energy by its customers.

History. Acts 1973, No. 164, § 15; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.14; Acts 2019, No. 315, §§ 2483, 2484.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (a)(2) and (a)(4).

Subchapter 6 — Arkansas Renewable Energy Development Act of 2001

23-18-603. Definitions.

As used in this subchapter:

(1) "Avoided cost" means:

(A) For an electric utility other than a municipal utility, the costs to an electric utility of electric energy or capacity, or both, that, but for the generation from the net-metering facility or facilities, the utility would generate itself or purchase from another source, as determined by a commission consistent with § 23-3-701 et seq.; or

(B) For a municipal utility, the definition provided by the governing body of the municipal utility;

(2) "Commission" means the Arkansas Public Service Commission or other appropriate governing body for an electric utility as defined in subdivision (3) of this section;

(3) "Electric utility" means a public or investor-owned utility, an electric cooperative, or any private power supplier or marketer that is engaged in the business of supplying electric energy to the ultimate consumer or any customer classes within the state;

(4)(A) "Municipal utility" means a utility system owned or operated by a municipality that provides electricity.

(B) "Municipal utility" includes without limitation a:

(i) Utility system managed or operated by a nonprofit corporation under § 14-199-701 et seq.; and

(ii) Utility system owned or operated by a municipality or by a consolidated utility district under the General Consolidated Public Utility System Improvement District Law, § 14-217-101 et seq.;

(5) "Net excess generation" means the amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate that a net-metering customer has fed back to the electric utility that exceeds the amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate used by that customer during the applicable period determined by a commission;

(6) "Net metering" means measuring the difference in amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate supplied by an electric utility to a net-metering customer and the electricity generated by a net-metering customer and fed back to the electric utility over the applicable period determined by a commission;

(7) "Net-metering customer" means a customer of an electric utility that:

(A) Is an owner of a net-metering facility;

(B) Leases a net-metering facility subject to the following limitations:

(i) A lease shall not permit the sale of electric energy measured in kilowatt hours or electric capacity measured in kilowatts between the lessor and lessee; and

(ii) A lease shall not include any charge per kilowatt hour or any charge per kilowatt; or

(C) Is a government entity or other entity that is exempt from state and federal income tax, and that, for the sole purpose of this subchapter, obtains electric energy from a net-metering facility under a service contract qualifying for safe-harbor protection as provided under 26 U.S.C. § 7701(e)(3)(A), as in effect on July 24, 2019;

(8) "Net-metering facility" means a facility for the production of electric energy that:

(A) Uses solar, wind, hydroelectric, geothermal, or biomass resources to generate electricity, including, but not limited to, fuel cells and micro turbines that generate electricity if the fuel source is entirely derived from renewable resources;

(B) Has a generating capacity of not more than:

(i) The greater of twenty-five kilowatts (25 kW) or one hundred percent (100%) of the net-metering customer's highest monthly usage in the previous twelve (12) months for residential use;

(ii) For customers of electric utilities, one thousand kilowatts (1,000 kW) for use other than residential use unless otherwise allowed by a commission under § 23-18-604; or

(iii) For customers of a municipal utility, the limits established by the governing body of the municipal utility under § 23-18-605;

(C) Is located in Arkansas;

(D) Can operate in parallel with an electric utility's existing transmission and distribution facilities;

(E) Is intended primarily to offset part or all of the net-metering customer requirements for electricity; and

(F)(i) May include an energy storage device that is configured to receive electric energy solely from a net-metering facility.

(ii) The capacity of an energy storage device shall not be used to calculate the capacity limits listed in subdivision (8)(B) of this section if the energy storage device is configured to receive electric energy solely from a net-metering facility;

(9) "Quantifiable benefits" means the:

(A) Reasonably demonstrated costs that:

(i) Are related to the provision of electric service and based on the utility's most recent cost-of-service study filed with the commission; and

(ii) Will be avoided by the utility by the use of net metering;

(B) Monetary value provided to a utility by the use of net metering as specified by a market mechanism, if any, of the regional transmission organization of which the electric utility is a member; and

(C) Monetary value provided to a utility by the use of net metering as specified by a market mechanism, if any, that measures utility distribution system benefits; and

(10) "Renewable energy credit" means the environmental, economic, and social attributes of a unit of electricity, such as a megawatt hour, generated from renewable fuels that can be sold or traded separately.

History. Acts 2001, No. 1781, § 3; 2007, No. 1026, § 1; 2015, No. 827, § 1; 2019, No. 464, § 1.

Amendments. The 2019 amendment inserted (1) and redesignated former (1) and (2) as (2) and (3); deleted "municipal utility" following "electric cooperative" in (3); inserted (4) and redesignated former (3) through (5) as (5) through (7); inserted "as measured in kilowatt hours or kilowatt hours multiplied by the applicable" twice in (5) and once in (6); added "determined by a commission" at the end of (5) and (6); in (6), substituted "difference in

amount of" for "difference between", inserted "to a net metering customer", and deleted "billing" preceding "period"; rewrote (7); redesignated former (6) as (8); rewrote (8)(B)(ii) and inserted (8)(B)(iii); inserted (8)(F) and (9); redesignated former (7) as (10); and made stylistic changes.

23-18-604. Commission authority — Definition.

(a) An electric utility shall allow net-metering facilities to be interconnected using a standard meter capable of registering the flow of electricity in two (2) directions.

(b) Following notice and opportunity for public comment, a commission:

(1) Shall establish appropriate rates, terms, and conditions for net metering;

(2) For net-metering customers who receive service under a rate that does not include a demand component, may:

(A) Require an electric utility to credit the net-metering customer with any accumulated net excess generation as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate in the next applicable billing period and base the bill of the net-metering customer on the net amount of electricity as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate that the net-metering customer has received from or fed back to the electric utility during the billing period;

(B) Take the following actions if those actions are in the public interest and doing so will not result in an unreasonable allocation of or increase in costs to other utility customers:

(i) Separately meter the electric energy, measured in kilowatt hours, supplied by the electric utility to the net-metering customer and the electric energy, measured in kilowatt hours, that is generated by the net-metering customer's net-metering facility that is fed back to the electric utility at any time during the applicable billing period;

(ii) Apply the commission-approved retail rate to all kilowatt hours that are supplied by the electric utility to a net-metering customer by the electric utility during the applicable period determined by a commission;

(iii) Apply the avoided cost of the electric utility plus any additional sum determined under subdivision (b)(2)(B)(iv) of this section to all kilowatt hours supplied to the electric utility by a net-metering customer, during the period determined by a commission, which shall be credited to the total bill of the net-metering customer in a dollar value; and

(iv) The additional sum added to the avoided cost of the electric utility may be applied after the demonstration of quantifiable benefits by the net-metering customer and shall not exceed forty percent (40%) of the avoided cost of the electric utility;

(C) Authorize an electric utility to assess a net-metering customer that is being charged a rate that does not include a demand component a per-kilowatt-hour fee or charge to recover the quantifi-

able direct demand-related distribution cost of the electric utility for providing electricity to the net-metering customer that is not:

(i) Avoided as a result of the generation of electricity by the net-metering facility; and

(ii) Offset by quantifiable benefits; or

(D) Take other actions that are in the public interest and do not result in an unreasonable allocation of costs to other utility customers;

(3) Shall require that net-metering equipment be installed to accurately measure the electricity:

(A) Supplied by the electric utility to each net-metering customer; and

(B) Generated by each net-metering customer that is fed back to the electric utility over the applicable billing period;

(4) May authorize an electric utility to assess a net-metering customer a greater fee or charge of any type, if the electric utility's direct costs of interconnection and administration of net metering outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric utility's entire customer base;

(5) For net-metering customers who receive service under a rate that does not include a demand component, shall require an electric utility to credit a net-metering customer with the amount of any accumulated net excess generation as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate in the next applicable billing period;

(6) Except as provided in subdivision (b)(9) of this section, for net-metering customers who receive service under a rate that includes a demand component, shall require an electric utility to credit the net-metering customer with any accumulated net excess generation in the next applicable billing period and base the bill of the net-metering customer on the net amount of electricity that the net-metering customer has received from or fed back to the electric utility during the billing period;

(7) May expand the scope of net metering to include additional facilities that do not use a renewable energy resource for a fuel if so doing results in distribution system, environmental, or public policy benefits;

(8) Shall provide that:

(A)(i) The amount of the net excess generation credit as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate remaining in a net-metering customer's account at the close of a billing cycle shall not expire and shall be carried forward to subsequent billing cycles indefinitely.

(ii) However, for net excess generation credits older than twenty-four (24) months, a net-metering customer may elect to have the electric utility purchase the net excess generation credits in the net-metering customer's account at the electric utility's avoided cost, plus any additional sum determined under this section, if the sum to be paid to the net-metering customer is at least one hundred dollars ($100).

(iii) An electric utility shall purchase at the electric utility's avoided cost, plus any additional sum determined under this section, any net excess generation credit remaining in a net-metering customer's account when the net-metering customer:

(a) Ceases to be a customer of the electric utility;

(b) Ceases to operate the net-metering facility; or

(c) Transfers the net-metering facility to another person; and

(B) A renewable energy credit created as the result of electricity supplied by a net-metering customer is the property of the net-metering customer that generated the renewable energy credit; and

(9) May allow a net-metering facility with a generating capacity that exceeds the limits provided under § 23-18-603(8)(B)(ii) or § 23-18-603(8)(B)(iii) of up to twenty thousand kilowatts (20,000 kW) if:

(A) For any net-metering facility with a generating capacity of less than five thousand kilowatts (5,000 kW):

(i) The net-metering facility is not for residential use;

(ii) Increasing the generating capacity limits for individual net-metering facilities results in distribution system, environmental, or public policy benefits or allowing an increased generating capacity for the net-metering facility would increase the state's ability to attract businesses to Arkansas; and

(iii) Allowing an increased generating capacity for the net-metering facility is in the public interest; or

(B) For any net-metering facility with a generating capacity of greater than five thousand kilowatts (5,000 kW):

(i) The net-metering facility is not for residential use;

(ii) Increasing the generating capacity limits for individual net-metering facilities results in distribution system, environmental, or public policy benefits or allowing an increased generating capacity for the net-metering facility would increase the ability of the state to attract business to Arkansas;

(iii) Allowing an increased generating capacity for the net-metering facility does not result in an unreasonable allocation of costs to other utility customers; and

(iv) Allowing an increased generating capacity for the net-metering facility is in the public interest; and

(10)(A) Shall allow the net-metering facility of a net-metering customer who has submitted a standard interconnection agreement, as referred to in the rules of the Arkansas Public Service Commission, to the electric utility after July 24, 2019, but before December 31, 2022, to remain under the rate structure in effect when the net-metering contract was signed, for a period not to exceed twenty (20) years, subject to approval by a commission.

(B) A net-metering facility under subdivision (b)(10)(A) of this section remains subject to any other change or modification in rates, terms, and conditions.

(c)(1) Except as provided in subdivision (c)(2) of this section, an electric utility shall separately meter, bill, and credit each net-metering

facility even if one (1) or more net-metering facilities are under common ownership.

(2)(A)(i) At the net-metering customer's discretion, an electric utility may apply net-metering credits from a net-metering facility to the bill for another meter location if the net-metering facility and the separate meter location are under common ownership within a single electric utility's service area.

(ii) Subdivision (c)(2)(A)(i) of this section does not apply if more than two (2) customers that are governmental entities or other entities that are exempt from state and federal income tax defined under § 23-18-603(7)(C) co-locate at a site hosting the net-metering facility.

(B) Net excess generation shall be credited first to the net-metering customer's meter to which the net-metering facility is physically attached.

(C) After applying net excess generation under subdivision (c)(2)(B) of this section and upon request of the net-metering customer under subdivision (c)(2)(A) of this section, any remaining net excess generation shall be credited to one (1) or more of the net-metering customer's meters in the rank order provided by the net-metering customer.

(d) A person who acts as a lessor or service provider as described in § 23-18-603(7)(B) or § 23-18-603(7)(C) shall not be considered a public utility as defined in § 23-1-101.

History. Acts 2001, No. 1781, § 4; 2007, No. 1026, § 2; 2013, No. 1221, § 1; 2015, No. 827, §§ 2-6; 2019, No. 464, § 2.

A.C.R.C. Notes. The reference in subdivision (b)(6) to "subdivision (b)(9) of this section" is incorrect. The intended reference appears to be "subdivision (b)(8) of this section".

Amendments. The 2019 amendment substituted "net metering" for "net-metering contracts, including" in (b)(1); deleted (b)(1)(A); inserted (b)(2) and redesignated the remaining subdivisions accordingly; substituted "Shall require" for "A requirement" in (b)(3); in (b)(5), added "For net-metering customers who receive service under a rate that does not include a demand component" and inserted "the amount of"; inserted "as measured in kilowatt hours or kilowatt hours multiplied by the applicable rate" in (b)(5) and (b)(8); inserted (b)(6) and redesignated former (b)(4) as (b)(7); deleted former (b)(5); redesignated former (b)(6) as (b)(8); inserted "amount of the" in the introductory language of (b)(8)(A)(i); substituted "plus any additional sum determined under this section" for "estimated annual average avoided cost rate for wholesale energy" in (b)(8)(A)(ii) and (iii); redesignated former (7) as (9) and rewrote; and added (10); deleted (c); redesignated former (d) as (c); redesignated former (c)(2)(A) as (c)(2)(A)(i) and inserted (c)(2)(A)(ii); added (d); updated internal references; and made stylistic changes.

23-18-605. Municipal utilities.

(a) A municipal utility shall allow net-metering facilities to be interconnected according to the ordinances, rules, or regulations established by the governing body of the municipal utility.

(b) The governing body of a municipal utility may elect to follow procedures under § 23-18-604 or may adopt ordinances, rules, or regulations establishing the rates, terms, and conditions allowing the

interconnection of net-metering facilities, including generation facilities and energy storage devices, whether owned or leased by a customer or operated by a third party on behalf of a customer.

(c) The governing body of a municipal utility may limit the generating capacity of a net-metering facility to less than twenty-five kilowatts (25 kW) for residential customers or three hundred kilowatts (300 kW) for nonresidential customers only after the governing body finds that the capacity limit is necessary for reliable utility operations or the public health, safety, or welfare.

(d) The governing body of a municipal utility shall not establish a rate or fee that reduces the value of electric energy from a net-metering facility to below the avoided cost of the municipal utility.

(e) For customers who receive service under a rate that includes a demand component, the governing body of the municipal utility shall require a municipal utility to credit a net-metering customer with any accumulated net excess generation in the next applicable billing period and base the bill of the customer on the net amount of electricity that the net-metering customer has received from or fed back to the municipal utility during the billing period.

History. Acts 2019, No. 464, § 3.

Subchapter 9 — Arkansas Electric Utility Storm Recovery Securitization Act

SECTION.

23-18-903. Financing orders.

(a) An electric utility may petition the Arkansas Public Service Commission for a financing order. For each petition, the electric utility shall:

(1) Describe the storm recovery activities that the electric utility has undertaken or proposes to undertake and describe the reasons for undertaking the activities;

(2) Set forth the known storm recovery costs and estimate the costs of any storm recovery activities that are not completed or for which the costs are not yet known as identified and requested by the electric utility;

(3) Set forth the level of the storm recovery reserve that the utility proposes to establish or replenish and has determined would be appropriate to recover through storm recovery bonds and is seeking to so recover and such level that the utility is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining the amounts and methods of recovery;

(4) Indicate whether the electric utility proposes to finance all or a portion of the storm recovery costs and storm recovery reserve using storm recovery bonds. If the electric utility proposes to finance a portion

of such costs, the electric utility shall identify that portion in the petition;

(5) Estimate the financing costs related to the storm recovery bonds;

(6) Estimate the storm recovery charges necessary to pay in full as scheduled the principal of, premium, if any, and interest on the proposed storm recovery bonds and related financing costs until the legal final maturity date of such proposed storm recovery bonds;

(7) Estimate any cost savings from or demonstrate how rate impacts to customers would be mitigated as a result of financing storm recovery costs with storm recovery bonds in comparison with traditional utility financing or other traditional utility recovery methods;

(8) File with the petition direct testimony supporting the petition; and

(9) Facilitate a timely audit of all capital costs included within the storm recovery costs proposed to be financed by storm recovery bonds.

(b)(1)(A) Proceedings on a petition submitted pursuant to subsection (a) of this section shall begin with a petition by an electric utility and shall be disposed of in accordance with the commission's rules promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except that the provisions of this section, to the extent applicable, shall control.

(B) Within seven (7) days after the filing of a petition, the commission shall publish a case schedule, which schedule shall place the matter before the commission on an agenda that will permit a commission decision no later than one hundred twenty (120) days after the date the petition is filed.

(C) No later than one hundred thirty-five (135) days after the date the petition is filed, the commission shall issue a financing order or an order rejecting the petition. The commission shall issue a financing order authorizing financing of reasonable and prudent storm recovery costs, the storm recovery reserve amount determined appropriate by the commission, and financing costs if the commission finds that the issuance of the storm recovery bonds and the imposition of storm recovery charges authorized by the order are reasonably expected to result in lower overall costs or to mitigate rate impacts to customers as compared with traditional utility financing or other traditional utility recovery methods. Any determination of whether storm recovery costs are reasonable and prudent shall be made with reference to the general public interest in and the scope of effort required to provide the safe and expeditious restoration of electric service.

(2) In a financing order issued to an electric utility, the commission shall:

(A) Specify the amount of storm recovery costs and the level of storm recovery reserves, taking into consideration, to the extent the commission deems appropriate, any other methods used to recover these costs, and describe and estimate the amount of financing costs which may be recovered through storm recovery charges, and specify the period over which such costs may be recovered;

(B) Determine that the proposed structuring, expected pricing, and financing costs of the storm recovery bonds are reasonably expected to result in lower overall costs or would mitigate rate impacts to customers as compared with traditional utility financing or other traditional utility recovery methods;

(C) Provide that, for the period specified pursuant to subdivision (b)(2)(A) of this section, the imposition and collection of storm recovery charges authorized in the financing order shall be nonbypassable and paid by all customers receiving transmission or distribution service, or both, from an electric utility or its successors or assignees under commission-approved rate schedules as provided in the financing order. An individual customer's monthly storm recovery charges shall be based upon the customer's then-current monthly billing determinants;

(D) Determine what portion, if any, of the storm recovery reserves must be held in a funded reserve and any limitations on how the reserve may be held, accessed, or used;

(E) Include a formula-based mechanism for making expeditious periodic adjustments in the storm recovery charges that customers are required to pay under the financing order and for making any adjustments that are necessary to correct for any projected overcollection or undercollection of the charges or to otherwise ensure the timely payment as scheduled of storm recovery bonds and financing costs and other required amounts and charges payable in connection with the storm recovery bonds;

(F) Specify the storm recovery property that is or shall be created in favor of an electric utility or its successors or assignees and that shall be used to pay or secure storm recovery bonds and financing costs;

(G) Specify the degree of flexibility to be afforded to the electric utility in establishing the terms and conditions of the storm recovery bonds, including, but not limited to, repayment schedules, interest rates, and other financing costs;

(H) Provide the method by which storm recovery charges shall be allocated among the customer classes;

(I) Provide that after the final terms of an issuance of storm recovery bonds have been established and prior to the issuance of storm recovery bonds, the electric utility shall determine the resulting initial storm recovery charge in accordance with the financing order and such initial storm recovery charge shall be final and effective upon the issuance of such storm recovery bonds without further commission action; and

(J) Include any other conditions that the commission considers appropriate and that are not otherwise inconsistent with this section.

(c) After the issuance of a financing order, the electric utility retains sole discretion regarding whether to cause the storm recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance, provided that the storm recovery bonds,

other than refunding bonds, may not be issued later than two (2) years from the date the financing order becomes final and nonappealable, or such later date as provided in the financing order, and provided further, that nothing herein shall prevent the electric utility, prior to the end of such two-year period, from abandoning the issuance of storm recovery bonds under the financing order, if this is in the best interest of ratepayers, by filing with the commission a statement of abandonment and the reasons therefore. Nothing herein limits the rights of the electric utility to recover its storm recovery costs under normal rate-making should the storm recovery bonds not be issued.

(d) At the request of an electric utility, the commission may commence a proceeding and issue a subsequent financing order that provides for the refinancing, retiring, or refunding of storm recovery bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in subsection (b) of this section. Effective on retirement of the refunded storm recovery bonds and the issuance of new storm recovery bonds, the commission may adjust the related storm recovery charges accordingly or establish substitute storm recovery charges. Any such financing order shall be issued within one hundred twenty (120) days of the application of an electric utility therefor.

(e) All financing orders by the commission shall be operative and in full force and effect from the date of issuance by the commission.

(f) An aggrieved party or intervenor may within fifteen (15) days after the financing order or a supplemental order made by the commission becomes effective, or within fifteen (15) days from the date an application for rehearing is deemed to be denied as provided in § 23-2-422, file in the Court of Appeals a petition setting forth the particular cause of objection to the order complained of. Inasmuch as delay in the determination of the appeal of a financing order may delay the issuance of storm recovery bonds thereby diminishing savings to customers which might be achieved if such bonds were issued as contemplated by a financing order, all such cases shall be given precedence over all other civil cases in the court and shall be heard and determined as speedily as possible.

(g) A financing order issued to an electric utility may provide that creation of the electric utility's storm recovery property pursuant to subdivision (b)(2)(F) of this section is conditioned upon, and shall be simultaneous with, the sale or other transfer of the storm recovery property to an assignee and the pledge of the storm recovery property to secure storm recovery bonds.

(h) If the commission issues a financing order, the electric utility shall file with the commission at least annually a request for administrative approval applying the formula-based true-up mechanism to make the adjustments described in subdivision (b)(2)(E) of this section. The review of such a request shall be limited to determining whether there is any mathematical error in the application of the formula-based mechanism relating to the appropriate amount of any projected over-

collection or undercollection of storm recovery charges and the amount of an adjustment. Such adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of storm recovery bonds approved under the financing order. Within fifteen (15) days after receiving an electric utility's request pursuant to this subsection, the commission shall either administratively approve the request or inform the electric utility of any mathematical errors in its calculation. If the commission informs the utility of mathematical errors in its calculation, the utility may correct its error and refile its request. The time frames previously described in this subsection shall apply to a refiled request.

(i) Subsequent to the earlier of the transfer of storm recovery property to an assignee or the issuance of storm recovery bonds authorized thereby, a financing order is irrevocable, and except as provided in subsections (d) and (h) of this section, the commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust storm recovery charges approved in the financing order.

History. Acts 2009, No. 729, § 1; 2019, No. 315, § 2485.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b)(1)(A).